

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE, THENI.

PRESENT: Tmt.G.VIJAYA, B.A.M.L., PGDCFS.,

PRINCIPAL DISTRICT JUDGE, THENI

Wednesday the 16th of March 2022

Original Suit No.59/2015

Meenakshi ... Plaintiff

/Versus/

1. Murugan

2. Shanmugam

3. Lakshmi

4. Palani Andavar

5. Arumugam

6. Muthukumarasan

7. Kandasamy

8. Somasundram

9. Balalsubramani

10. Swaminathan ... Defendants

This suit was taken on file on 29.10.2015 and came up before me on 17.02.2022 for final hearing in the presence of Thiru.N.Namasivayam, Advocate for the Plaintiff and Thiru.S.T.Balamurugan, Advocate for the

Defendants No.1 to 4, 6, 7 and 9 and Thiru.R.Nagendrakumar, Advocate for the Defendant No.8 and Thiru.K.Muthuramalingam, Advocate for the Defendant No.10 and the Defendant No.5 called absent and set ex-parte on xxxxx and perused the documents and having stood over for consideration till this day, this court passed the following...

JUDGMENT

This suit has been filed by the plaintiff seeking for Preliminary Decree for Partition and separate possession of the Plaintiff's 1/11th share of the suit properties by metes and bounds and by appointment of an Advocate/Commissioner and granting a decree for Permanent Injunction restraining the defendants their men and agents from in any way alienate and encumber the suit properties till the suit properties are lawfully divided and to pay the cost of this suit to the plaintiff.

1. BRIEF AVERMENTS CONTAINED IN THE PLAINT:-

i. The suit properties consist of a house and landed properties. The suit properties originally and ancestrally belonged to one Masanam and his wife Verrakamulu Ammal. The said Masanam and Verrakamullu Ammal had a son by name Subraani who is none other than the father of the Plaintiff herein. The said Subramani married one Vellaithai. Through her the said Subramani had 9 sons

and 2 daughters by name Murugan, Shanmugam, Palani Andavar, Arumugam, Muthukumarasan, Kandasamy, Somasundram, Balasubramani, Swaminathan, Lakshmi [the Defendants 1 to 10 herein] and one Meenakshi the Plaintiff herein. The genealogy is produced herewith as document No.1 to show the relationship between the Plaintiff and the Defendants.

ii. The above said Masanam and Veerakamulu Ammal were in possession and enjoyment of the suit properties. After the demise of the above said Masanam and his wife Veerakamulu Ammal the father of the Plaintiff by name Subramani became entitled to the suit properties and he was in possession and enjoyment of the same. The father of the Plaintiff namely Subramani died on 10.11.2013. The death extract of the deceased Subramani is produced herewith as document No.2. The wife of Subramani Vellaithai predeceased her husband and died on 29.01.2013 and the same is clearly mentioned in the legal heir certificate of the deceased Subramani. The photo copy of the legal heir certificate of the deceased Subramani is produced herewith as document No.3. The Plaintiff and the Defendants are mentioned as legal heirs of the deceased Subramani. After the demise of the parents of the Plaintiff as well as the Defendants namely Subramani and Vellaithai the Plaintiff along with the Defendants 1 to 10 became entitled to the suit properties and they are in joint possession and enjoyment of the same.

iii. The 1st item of the suit property is a house property. The house tax receipt stands in the name of Subramani in respect of the 1st item of the suit property is produced herewith as document No.4. Items No.2 and 3 of the suit properties are landed properties and the same comprised in patta No.837 and 2126. The kist receipt stands in the name of Subramani in respect of the items No.2 and 3 of the suit properties and the same is produced herewith as a document No.5. Items No.2 and 3 of the suit properties consisting of a coconut grove as well as other fruit yielding trees are also planted in item No.2 and 3 of the suit properties. The 4th item of the suit property consisting of jewells belonged to the mother of the Plaintiff namely Vellaithai. The Plaintiff along with the Defendants have joint right in respect of the 4th item of the suit property. The Plaintiff along with the Defendants 1 to 10 after their demise of their parents are in joint possession and enjoyment of the suit properties. The Plaintiff along with the Defendants 1 to 10 shared the proceeds equally between them in respect of the suit properties. The facts and the documents mentioned above will clearly establish that the Plaintiff along with the Defendants 1 to 10 have joint right as well as they are in joint possession and enjoyment of the suit properties.

iv. Now all the Defendants are not in talking terms with the Plaintiff and colluded together started to act detrimental towards the interest of the Plaintiff in respect of the suit properties. All the Defendants colluded together attempted

to alienate and encumber the suit properties. Since the suit properties are ancestral in nature the Plaintiff is entitled to her legitimate 1/11th share of the suit properties. Likewise the Defendants 1 to 10 are each entitled to 1/11th share of the suit properties. The Defendants have no legal right to alienate and encumber the suit properties including the Plaintiff's banafide 1/11th share. The Plaintiff requested the Defendants number of times to divide the suit properties and allot her legitimate 1/11th share. The Defendants adopted delaying tactics. The Plaintiff sent a legal notice to the Defendants on 18.07.2015 requesting the Defendants to effect partition and allot her 1/11th share. The 8th Defendant received the notice. The copy of the lawyer notice dated 18.07.2015 and the acknowledgment card is produced herewith as document No.6 and 7. Even after the issuance of the legal notice the Defendants did not come forward to effect partition. The Plaintiff met the Defendants during the last week of September 2015 requesting the Defendants to effect partition and allot her 1/11th share of the suit properties. But the Defendants refused for the same and adopted a dilly dally tactics. On the other hand the Defendants are taking hectic steps to alienate and encumber the suit properties. The Plaintiff feels no safer to keep the suit properties in joint. Hence the Plaintiff has no other go except to file the present suit for partition and permanent injunction.

2. BRIEF AVERMENTS CONTAINED IN THE WRITTEN STATEMENT OF D6:-

i. The Plaintiff has filed the suit against the Defendants seeking for partition of the schedule mentioned of both immovable and movable properties. Both the Plaintiff and the Defendant's father M.Subramani died intestate on 10.11.2013 leaving behind them as his legal heirs and they all are entitled to shares over the suit properties.

ii. All the Defendants are not prevailing with brotherhood relationship each and every one are under the position of repelled directions and more over there is misunderstanding prevailing between all the Defendants. The Defendants are not inclined to converge at one point to meet out the issues raised in this suit because all are spread over here and there. The Plaintiff is also one of the female legal heirs and she is also entitled to equal share in the suit properties. Likewise the Defendants 1, 2, 3, 4, 6, 7 and 9 are entitled to equal shares over the suit properties which may be intended to 1/11th share legally entitled to. Not even the Plaintiff but also all the parties in the suit are legally entitled to 1/11th share over the suit properties.

iii. The Defendants 1, 4, 6, 7 and 9 are ready to enter into a compromise and willing to allot the respective shares not only to the Plaintiff but also to the other Defendants including the 6th Defendant and to divide equal shares according to

the welfare of the legal heirs and in their favour and the benefits to be exercised to all the parties in the suit to meet out their own liabilities. The schedule mentioned gold jewells of both the parties and the same is at the hands of the 8th Defendant.

iv. The Defendants herein have sketch showing the identity and the total extent of the suit properties and the partition may be effected by allotting their respective shares in a suitable way to take individual possession and enjoyment of their allotted shares. The schedule of properties in the suit is a Hindu undivided joint family properties. Hence it is just and necessary to pass a preliminary and final decree by allotting 1/11th share to the Plaintiff and also to all the Defendants who are all being the legal heirs of late M.Subramanian including mentioned both movable and immovable properties.

v. The 8th Defendant is in possession of the entire suit properties and thereby some portion of the suit property was leased out to the 3rd parties by the 8th Defendant and enjoying the mesne profits since the date of death of the father M.Subramanian for the past 8 years and the 8th Defendant has to deposit the mesne profits before this Hon'ble Court and the same may be put to shares to both the parties.

vi. It is therefore prayed that this Hon'ble Court may be pleased to pass a submitting preliminary and final decree of partition by allotting 1/11th share to

both the Plaintiff and the Defendants and the benefits to be exercised in a suitable way in so far as Defendants deem fit and proper in the circumstances of the case.

3. BRIEF AVERMENTS CONTAINED IN THE WRITTEN STATEMENT OF D8:-

i. The case of the Plaintiff is false and fraudulent and the Plaintiff is not entitled to any relief whatsoever.

ii. Save and except those that are specifically admitted herein all other allegations contained in the plaint are denied as false and frivolous and the Plaintiff is put to strict proof of each and every allegation contained therein

iii. The suit as framed by the Plaintiff is not maintainable either in law or on facts. The suit has been filed for partition only for the properties situate at Bodi and not for the properties purchased out of the business income set up by the father of the Plaintiff and the Defendants. All the properties are not included in the schedule and on this ground alone the suit is liable to be dismissed. If the Plaintiff wants to have a share in the landed properties, the jewells given to her at the time of marriage and subsequent functions and all seer has to be included in the schedule to the Plaint. The averments made in paragraphs IV, V, VI, VII and VIII of the Plaint are denied as false and incorrect besides vexatious and the

Plaintiff has to strictly prove the same. The address of the 4th Defendant in the cause title is incorrect.

iv. The Plaintiff has twisted the facts and filed the suit. The Plaintiff has not disclosed the entire facts and she has approbated and reprobated according to her convenience. Father Subramainian while he was at the age of 7 years their grandfather died and item Nos.1 to 3 are all ancestral properties devolved on their father by inheritance and it as held and managed by his mother and grandmother of the Plaintiff and the Defendants namely Veerakamu Ammal. The said lands are solely depended on seasonal rain and out of the income from the rained lands the grandmother made a living along with the children. At the age of 19 the father got married to Vellathai ammal.

v. The grandmother of the parties to the suit gave some money from the income obtained from the agriculture derived from the said item nos.2 and 3 lands. With the said money the father had started a business in the name and style of M.M.R.Audio Madurai Murugan Radio. The said business M.M.R.Audio in which father Subramainan would manufacture amplifiers for audio and also let speakers for hire. The Plaintiff and Defendants father was a pioneer in the filed of loud speakers renting and assembling and selling the amplifiers. For the every Institutions, Temples, Public Programmes, Musical filed, Musical

functions of T.M.Soundararajan and other cinema singers he used to provide arrange speaker sets in the function or programme.

vi. The said M.M.R.Audio is also highlighted in various newspapers and journals. Father of the parties to the suit's achievement was published in the papers and journal successful businessman. Further in temples also the musical and amplifiers are used. The said M.M.R.Audio had branches in many places having Madurai as its head office. The said M.M.R.Audio's have branches in Bodi, Theni, Bathalagundu, Rajapalayam, Peraiyur, Coimbatore and Madras. In Madurai there were two units and in all the important places by way of agencies. Without M.M.R. mikes no renowned singers would sing and mikes and speakers were provided only by M.M.R Audios for Thiyagarajar Urchavam, Tiruchendur, Palani, Nellore Appar Kovil. The concern is a big and in every unit there would be minimum of three staff namely one Manager and two workers. Further Audio services are rendered to cinema theatres and thus the family was earning money through the above said business founded up by father Subramanian.

vii. The 1st Defendant Murugan after his marriage set up a separate house. The Plaintiff and Defendants father gave him M.M.R.Audio Service business at Coimbatore area for him and now he is having a shop in Dindigul. With the income derived from the business given to him in that area he purchased

properties in his name and all the properties standing in his name also to be included for partition. There is no independent income apart from the Audio Service business founded by the father as such the properties standing in his name also to be included.

viii. The 2nd Defendant Shanmugam got married and was given the M.M.R.Audios at 43, Cutchery Road, Mylapore and taking care of the business. Out of the said family business the 2nd Defendant has purchased house at 70A, 3rd Street, Kumaran Kudil extension, Thuraipakam Chennai-97 and another house at Ayya Construction, Sitapathi Nagar, Velachery was purchased by him and from the money funded by the Plaintiff and Defendants father from the M.M.R.Audios. After getting separate share from the family business and through said money they had purchased the said house which is accrued from the family business. They did not turn up there after again. The said Murugan went with his wife after pregnancy festival of his wife and has come to Bodi at the time of death of the mother.

ix. The Plaintiff is married in 1980 and has two male children. Then she deserted her husband and came back to Bodi along with her children. The 8th Defendant alone took care of them in his house. The 8th Defendant educated the children of the Plaintiff upto 9th standard and then went with their father. The Plaintiff was given 40 sovereigns of gold at the time of marriage in the year

1980 and after the marriage also she stayed with the 8th Defendant at Bodi and she and her children were taken care by him and thereafter they to their father.

x. The father of the parties did not manage the schedule mentioned properties and it is the managed by their mother who is in Bodi. Thereafter 8th Defendant was looking after the schedule mentioned properties. In the place of his father Subramanian she was looking after all the family affairs all the money for the purchase of the property at Chennai was given by him out of the income derived from the agriculture land. The lands are very rough and only cultivable when it rains. The 8th Defendant alone ploughed and planted cash trees like Mango, Coconut and after 15 years they are ripe for yield and the lands has become Mango Grove and coconut Grove. Looking it the Plaintiff and the Defendants on ill advice had filed this false case after getting all the money from the family business and agriculture land and scheduled separate property and money. The 8th Defendant used to take lease of various agriculture land by pledging his wife's jewells and earned income. Further also by getting loan he has promoted the lands in item Nos.2 and 3.

xi. The 3rd Defendant Lakshmi has 4 children and two deliveries were looked after by the 8th Defendant. Further at the time of marriage sufficient sovereign of jewells were given in the year 1986. At the time of marriage itself sufficient

jewells were given and she was given in marriage. Now she cannot claim any right over the said properties.

xii. The 4th Defendant Palani Andavar got married and was given the business at Madurai M.M.R.Audios. He has bought a house in Thirunagar out of the income from the family business. Further the good will and name of the business is used by him. He is doing sound service, Audio Service for theatre and earning out of the said business. The entire business is constituted only out of nucleus of schedule mentioned property at Bodi. Since the father of the Plaintiff and Defendants is not educated and he lost his father at his tender age and brought up by his single widowed mother out of the agriculture.

xiii. The 5th Defendant Arumugam was given education and studied DFT in film institute and for his education everything was given by the family business and agriculture by their father. Further he has given money for agriculture purpose and also given money for everybody in the family in need of necessity.

xiv. The 6th Defendant Muthukumaresan got married and divorced his wife. He is a drunkard and plays cards. He never does any work. He was taken care of by the 8th Defendant in his house. Even when he was injured with leg fracture the 8th Defendant was taking care of him. Now he is residing the front room Bodi

House in item No.1 along with the 8th Defendant. The 6th Defendant is living a wayward life and making all living upon the income of the 8th Defendant.

xv. The 7th Defendant Kandasamy was looking after the Madras Shop M.M.R.Audios and another one he started separately as Junior M.M.R and took all the business in that Mankadu, Thiruvertriyoor area. He got love married and living in Perambalur. He purchased property in Perambalur form the income of the said business and living therein.

xvi. The 9th Defendant Balasubramanian studied from the income of M.M.R.Audio and agriculture income of the schedule mentioned property and working as lecturer at Pune. He is unmarried and living at Pune. The 8th Defendant is looking after him and resides in his house when he comes to Bodi. Further on the ill advice of the other Defendants he has just signed in the written statement without any regard to the consequences. The said 9th Defendant is taking care of his elder sister Lakshmi the 3rd Defendant herein and her children. On her instigation he has filed the statement without regard to the real facts.

xvii. The 10th Defendant Swaminathan is living in Chennai and unmarried. The Defendants had earned income form the family business M.M.R.Audios and also took separate business and purchased property and schedule house property

at Chennai, Thirunagar Madurai which has to be also included in the common hotchpot of the Partition for a fair and just partition.

xviii. The 1st item of the suit property is a house property having an extent of 5 cents, house tax receipts stands in the name of father. The 8th Defendant is living therein and has looked after father and mother till their last days. None of them came even for death of the mother on 29.01.2013 the Palani Andavar did not come to the same who living in Madurai. He did not even choose to see his mother or do any final rituals to his own mother and such a very cruel minded person. Now after secluding income form the Audio Business he has purchased house property at Thirunagar Madurai after such a long period as the 8th Defendant has improved the agriculture land he is claiming property without bring the property earned from the nucleus of the ancestral property. With great circumspection he has purchased in the name of his wife.

xix. The 2nd item is landed property in S.No.921 having an 1.94.5 hectares in Patta No.837 in the name of father M.Subramanian the 8th Defendant reclaimed the said lands and created coconut grove, guava and dig well. None of them have cometo the lands at any point of time and they do not know about it. The 8th Defendant fought with the neighbours and protected the lands and improved the same when the other Defendant and Plaintiff took the profit of the family business and 8th Defendant was looking after agriculture by pledging his wife

jewellery and digging well and fixing motor and pipes. The Defendants and Plaintiffs are saying to cut the threes and close the well and go away. They are not interested to do agriculture and they want to destroy it. They have never given any money to the worker. All along they would ask money for club activities while doing their Audio business the 8th Defendant while doing agriculture work was chased by wild bull and he escaped by jumping into well and there was less water and his knee was injured.

xx. Even when the father fell in the Madurai shop the 4th Defendant Palani Andavar did not care for him. Even after his death he did not come to Bodi nor attended his funeral even when he was in Madurai. Further Lakshmi the 3rd Defendant Balasubramanian the 9th Defendant did not come to death of their father though the said Lakshmi's husband was in Natham at that time. Even for the 10th day function the Palani Andavar the 4th Defendant the Lakshmi the 3rd Defendant Balasubramanian the 9th Defendant did not come to anything. Now they are claiming property.

xxi. The ashes of the mother and father mortal remains is kept in the 3rd item of the property in S.No.941 and build a Samathi in that place. Further a Siva Temple is also there which is situated in 3 acres out of 16 acres. Moreover it is rocky area and no plantation is there in 3 acres of land. Further without adding the properties purchased out of the family business the Plaintiff has asked for

partition only the properties in Bodi though there are properties at Thuraipakkam, Perambalur, Chennai and Thirunagar, Madurai when the Plaintiff who has not chosen even to participate in the death of her father or on the 10th day function or even on subsequent days she is claiming right over the property without doing her pious obligation as a daughter. Further the 3rd Defendant 9th Defendant who did not done their pious obligation to do last rites and subsequent rights of their father has no right to claim any right in the property on the ground of equity. The 4th Defendant neither came to the death of his mother or father nor looked in their last days or for the subsequent rituals of 10th day has no right to claim property. Further the Defendants 1, 2, 4, 7 who have considerable property out of the family business without rendition of accounts nor the properties purchased out of the said income cannot claim share partially in the schedule mentioned property.

xxii. The wish of their father is to maintain the property for another one generation so that it will survive and maintain the Samathi ash of their mother kept in item No.3. Further the Samathi Asthi of the mother and father is placed and Siva Temple is built therein in item No.3. for the Kumba Abishekam of the said Siva Temple in which the asthi kept only Murugan the 1st Defendant and Swaminathan 10th Defendant alone participated. The Plaintiff and the Defendants are no least regard to the property mentioned in the schedule and

they never came to the schedule property and they are not in joint possession or enjoyment of the same. They do not know the lie and location of the schedule mentioned property. The Plaintiff and Defendants were not interested in maintaining lands and they want to destroy the same and sell away. Without including all the properties asking for partition is not maintainable.

4. BRIEF AVERMENTS CONTAINED IN THE WRITTEN STATEMENT OF D10:-

i. The suit is not maintainable under law and on facts. The Plaintiff is not entitled to the relief she claimed.

ii. The father of the Defendants and Plaintiff namely Subramani is the son of Masanam and Veerakamulu Ammal. It is true that the said Masanam and Veerakamulu Ammal had house and landed properties. The said Masanam and Veerakamulu died leaving behind them one son Subramani and three daughters as their legal heirs. As per law the estate left by later Masanam and Veerakamulu Ammal was inherited by the said Subramani and his three sisters. The said Subramani and his three sisters orally partitioned among them the properties mentioned in the suit was allotted to Subramani. The relationship narrated in the paragraph IV of the Plaint is admitted as true and correct.

iii. The said Masanam and Veerakamulu Ammal were in possession and enjoyment of the suit properties till their death. The allegation that after the

demise of the said Masanam and Veerakamulu Ammal the said Subramani became entitled to the suit properties is denied as false and fraudulent. It is admitted that the father of Plaintiff and Defendants died on 10.11.2013 and their mother Vellaithai pre-deceased their father. The allegation in paragraph V of the Plaintiff that the suit properties are in joint possession and enjoyment of Plaintiff and Defendants is denied as false and fraudulent. Though the suit properties as on date stands in the name of Subramani the father of Plaintiff and Defendants he was not entitled to the entire properties. The house tax receipt and patta are not documents to prove the title over the properties.

iv. There is no jewells belongs to the joint family. Since the mother of the Plaintiff and Defendants pre-deceased their father and all the jewells were given in possession of their father. It is further submitted that father sold the jewells and used the money for the welfare of the family. There is no jewells available in the joint family for partition. The allegation that the facts and documents mentioned above will clearly establish that the Plaintiff along with the Defendants 1 to 10 have joint right as well as they are in joint possession and enjoyment of the suit properties is denied as false and fraudulent.

v. The allegation in paragraph VIII of the Plaintiff that now all the Defendants are not in talking terms with the Plaintiff and colluded together started to act detrimental towards the interest of the Plaintiff in respect of the suit properties is

denied as false and fraudulent. The further allegations that all the Defendants colluded together attempted to alienate and encumber the suit properties are denied as false and fraudulent. In fact the Plaintiff filed this suit at the instigation of few Defendants arrayed as parties in this suit. The Plaintiff is not entitled to 1/11th share in the suit properties. The 4th item of the suit property is only an imagination.

vi. The allegation that the Plaintiff requested the Defendants number of times for partition and the Defendants adopted delaying tactics is denied as false and fraudulent. The 10th Defendant did not receive any notice s alleged in paragraph VIII of the plaint.

vii. The Plaintiff is ousted from the suit properties and she failed to claim their share in the suit properties within the prescribed period of time and in the result the Plaintiff cannot claim any shares over the suit properties. The suit filed by the Plaintiff at the ill advise and instigation of the 2nd Defendant.

viii. The father of the Plaintiff and Defendants during his life time operation Sound Service in the name and style of MMR [Mamdurai Murugan Radios]. He was rendering mike and sound service for big music events or concerts such as Thiruvaiyaru, Palani Temple, Thirunelveli, Thiruchendur etc. the said MMR is a well-known mike and radio operator in Tamilnadu. The said business is under the sole proprietorship of the said Subramani. After the death of the father

business in the name and style of MMR taken over by 4th Defendant and he is in charge of the business for the joint family. The Plaintiff purposely with bad intention omitted to add the family business in this suit. Hence the suit is liable to be dismissed.

5. REPLY STATEMENT OF THE PLAINTIFF:-

i. The contents of the written statement filed by the 7th and 8th Defendant are all absolutely false and incorrect misleading and fraudulent. The allegations in paragraphs 4 to 23 of the written statement are all denied as false and incorrect misleading and fraudulent and these allegations are all invented for the purpose of the filing the written statement.

ii. The allegation that the grandmother gave some money from the income derived from agriculture to the father of the Plaintiff and Defendants and started business of manufacturing amplifiers for audio and then the Plaintiff's father started many branches in respect of his business namely MMR Audio and then the family of the Plaintiffs and Defendant earned money with the income derived from the business and the Plaintiff's father purchased properties in his name and all the properties standing in his name also to be included for partition and the 2nd Defendant Shanmugam got married and started business in the name and style of MMR Audio at Mylapore and out of the said family business the 2nd Defendant purchased a house at Thuraipakkam at Chennai and another house

at Velachery and the said properties had been purchased by him through the income accrued from the family business are all absolutely false and incorrect and the Defendant should strictly prove the same.

iii. The further allegation that the Plaintiff deserted her husband and came back to Bodi and the 8th Defendant took care of the Plaintiff and her children and educated the children of the Plaintiff and the 8th Defendant made all arrangements to the marriage of the Plaintiff by giving 40 sovereigns of gold at the time of marriage in the year 1980 and after the marriage also she stayed with the 8th Defendant at Bodi and she and her children were taken care by him are all absolutely false and incorrect.

iv. The further allegation that the 8th Defendant was looking after the schedule mentioned properties and he was looking after all the family affairs all the money for the purchase of the property at Chennai was given by him out of the income derived from the agriculture land and the 8th Defendant alone ploughed and planted cash trees like Mango, Coconut and after 15 years they are ripe for yield and the lands has become Mango Grove and coconut Grove. Looking it the Plaintiff and the Defendants on ill advice had filed this false case after getting all the money from the family business and agriculture land and the 8th Defendant used to take lease of various agriculture land by pledging his

wife's jewells and earned income and also by getting loan he has promoted the lands in item Nos.2 and 3 are all false and fraudulent.

v. The further allegation that the 4th Defendant Palani Andavar purchased a house in Thirunagar out of the income form the family business and accordingly the 5th Defendant Arumugam was given education and studied DFT in Film Institute and for his education everything was given by the family business and the 6th Defendant Muthukumaresan is a drunkard and playing cards and he never does any work and he was taken care of the by the 8th Defendant in his house and the 6th Defendant is living a wayward life and making all living upon the income of the 8th Defendant are all false and incorrect, misleading and fraudulent.

vi. The further allegation that the 8th Defendant Kandasamy purchased a house in Perambur from the income of the family business of Chennai and the 9th Defendant Balasubramanian studied form the income of the family business and income from the agricultural lands and the 9th Defendant is taking care of his sister Lakshmi and her children and at her instigation the 9th Defendant filed a statement and the 10th Defendant Saminathan is living in Chennai and with the income of family business they took separate business and purchase property at Chennai, Thirunagar and all the purchased properties of them have to be

included in the common hotchpot of the partition are all absolutely false, incorrect, misleading and unfounded.

vii. The further allegation that in the suit 1st item the 8th Defendant is living and looked after his father and mother till their last days and none of them came for the death of their mother for doing final rituals are all absolutely false and incorrect. The allegation that the 8th Defendant reclaimed the suit item 2 and created coconut grove guava and dig well and neither of them have not come to the lands at any point of time and they do not know about it and the 8th Defendant fought with the neighbours and improved the same and when the other Defendants and Plaintiff took the profit of the family business and the 8th Defendant was looking after agriculture by pledging his wife's jewelry and digging well and fixing motor and pipes and the other Defendants and Plaintiff are saying to cut the tree and close the well and go away and they are not interested to do agriculture and they want to destroy it are all absolutely false and incorrect and the 8th Defendant should strictly prove the same. It is false to allege that the 8th Defendant has given money for the Defendants audio business and while he was doing agricultural work he was chased by wild bull and he escaped by jumping into well and there was less water and his knee was injured.

viii. The further allegation that the Plaintiff and the Defendants did not come to Bodi to attend the funeral of their father and for the 10th day ritual and the Defendants did not come and now claiming property are all false and incorrect.

It is false to allege that the ashes of the father and mother are kept in item 3 of the suit property and built a Samathi in that place and further a Siva Temple is also there in the suit land. The body of the father and mother are not buried, on the other hand their bodies were fired and the ashes of them were left in Rameshwaram and Suruli Theertham. The 8th Defendant knows pretty well about the same. There is no Samathi in the suit property and no Siva Temple in the suit property as alleged by him. Except the suit property there is no other property for the father and mother of the parties to the suit. The other properties alleged by the 8th Defendant are not the properties of their parents. In-order to contest and drag on the partition proceedings the 8th Defendant filed a false and vexatious written statement and there is no merit in it.

ix. The repeated allegation that the Plaintiff has not attended the death ceremony of her father and the 10th day ritual and she is claiming right over the suit property without doing her pious obligation as a daughter are all denied as false and incorrect.

x. The further allegation that the wish of their father is to maintain the property for another one generation so that it will survive and maintain the Samathi ash of their mother kept in item No.3 and the Samathi asthi of their mother and father is placed and Siva Temple is built there in item No.3 and the Plaintiff and Defendants never cared for the ashes and Samathi and the Plaintiff does not know the location of the suit properties and she is not intended in maintaining the lands and went to destroy the sale are all false and incorrect.

xi. There is no merit in the written statement filed by the 8th Defendant. Except the suit properties no other properties are liable for partition in the family. The 8th Defendant never gave any money to the plaintiff and he never taken care of the Plaintiff's family. The Plaintiff is entitled to get share in the suit property as alleged in the Plaint. The 8th Defendant cannot curtail the right and share of the Plaintiff in the suit property. The Plaintiff has got 1/11th share in the suit properties and all the Defendants should come forward to divide the suit properties and allot the Plaintiff's 1/11th share in it.

6. Based on the pleadings and the documents, on 06.02.2018 the following issues were framed;

1. Whether the suit properties are ancestral properties of the Plaintiff's family?
2. Whether the suit is bad for partial partition?

3. Is there any other properties available for partition among the parties?
4. Whether the Plaintiff is entitled for 1/11th share over the suit property?
5. Whether the Plaintiff is entitled for the relief of preliminary decree for partition as prayed for?
6. What is the share of other Defendants who have submitted the suit for decree?
7. To what other relief the Plaintiff is entitled for?

7. Based on the written statement of the 10th Defendant the following additional issue was framed on 14.11.2019;

Whether the Plaintiff is ousted from calming right over the suit property as claimed by D10?

8. ISSUE NOS. 2 to 6 AND ISSUE DATED 14.11.2019:-

Whether the suit is bad for partial partition?

Is there any other properties available for partition among the parties?

Whether the Plaintiff is entitled for 1/11th share over the suit property?

Whether the Plaintiff is entitled for the relief of preliminary decree for partition as prayed for?

What is the share of other Defendants who have submitted the suit for decree?

Whether the Plaintiff is ousted from calming right over the suit property as claimed by D10?

9. Heard both and perused the relevant records. The present suit is filed seeking for partition of the suit schedule properties. The case of the Plaintiff is that the suit properties consist of a house and landed properties. The suit properties originally and ancestrally belonged to one Masanam and his wife Verrakamulu Ammal. The said Masanam and Verrakamullu Ammal had a son by name Subramani who is none other than the father of the Plaintiff herein. The said Subramani married one Vellaithai. Through her the said Subramani had 9 sons and 2 daughters by name Murugan, Shanmugam, Palani Andavar, Arumugam, Muthukumarasan, Kandasamy, Somasundram, Balasubrramani, Swaminathan, Lakshmi [the Defendants 1 to 10 herein] and one Meenakshi the Plaintiff herein. The genealogy tree is marked as Ex.A1 to show the relationship between the Plaintiff and the Defendants.

10. Further case of the Plaintiff is that the above said Masanam and Veerakamulu Ammal were in possession and enjoyment of the suit properties. After the demise of the above said Masanam and his wife Veerakamulu Ammal the father of the Plaintiff by name Subramani became entitled to the suit properties and he was in possession and enjoyment of the same. The father of the Plaintiff namely Subramani died on 10.11.2013. The death extract of the deceased Subramani is marked as Ex.A2. The wife of Subramani Vellaithai predeceased her husband and died on 29.01.2013 and the same is clearly

mentioned in the legal heir certificate of the deceased Subramani. The photo copy of the legal heir certificate of the deceased Subramani is marked as Ex.A3. The Plaintiff and the Defendants are mentioned as legal heirs of the deceased Subramani. After the

demise of the parents of the Plaintiff as well as the Defendants namely Subramani and Vellaithai the Plaintiff along with the Defendants 1 to 10 became entitled to the suit properties and they are in joint possession and enjoyment of the same.

11. Further case of the Plaintiff is that the 1st item of the suit property is a house property. The house tax receipt stands in the name of Subramani in respect of the 1st item of the suit property is marked as Ex.A4. Items No.2 and 3 of the suit properties are landed properties and the same comprised in Patta No.837 and 2126. The Kist receipt stands in the name of Subramani in respect of the items No.2 and 3 of the suit properties is marked as Ex.A5. Items No.2 and 3 of the suit properties consisting of a coconut grove as well as other fruit yielding trees are also planted in item No.2 and 3 of the suit properties. The 4th item of the suit property consisting of jewells belonged to the mother of the Plaintiff namely Vellaithai. The Plaintiff along with the Defendants have joint right in respect of the 4th item of the suit property. The Plaintiff along with the Defendants 1 to 10

after their demise of their parents are in joint possession and enjoyment of the suit properties. The Plaintiff along with the Defendants 1 to 10 shared the proceeds equally between them in respect of the suit properties. The facts and the documents mentioned

above will clearly establish that the Plaintiff along with the Defendants 1 to 10 have joint right as well as they are in joint possession and enjoyment of the suit properties.

12. Further case of the Plaintiff is that now all the Defendants are not in talking terms with the Plaintiff and colluded together started to act detrimental towards the interest of the Plaintiff in respect of the suit properties. All the Defendants colluded together attempted to alienate and encumber the suit properties. Since the suit properties are ancestral in nature the Plaintiff is entitled to her legitimate $1/11^{\text{th}}$ share of the suit properties. Likewise the Defendants 1 to 10 are each entitled to $1/11^{\text{th}}$ share of the suit properties. The Defendants have no legal right to alienate and encumber the suit properties including the Plaintiff's bonafide $1/11^{\text{th}}$ share. The Plaintiff requested the Defendants number of times to divide the suit properties and allot her legitimate $1/11^{\text{th}}$ share. The Defendants adopted delaying tactics. The Plaintiff sent a legal notice to the Defendants on 18.07.2015 requesting the Defendants to effect partition and allot her $1/11^{\text{th}}$ share. The 8th Defendant received the notice. The copy of the lawyer notice

dated 18.07.2015 and the acknowledgment card is marked as Ex.A6 and Ex.A7. Even after the issuance of the legal notice the Defendants did not come forward to effect partition. The Plaintiff met the Defendants during the last week of September 2015 requesting the Defendants to effect

partition and allot her 1/11th share of the suit properties. But the Defendants refused for the same and adopted a dilly dally tactics. On the other hand, the Defendants are taking hectic steps to alienate and encumber the suit properties. The Plaintiff feels no safer to keep the suit properties in joint. Hence the Plaintiff has no other go except to file the present suit for partition and permanent injunction.

13. The contention of the 6th Defendant is that the Plaintiff has filed the suit against the Defendants seeking for partition of the schedule mentioned of both immovable and movable properties. Both the Plaintiff and the Defendant's father M.Subramani died intestate on 10.11.2013 leaving behind them as his legal heirs and they all are entitled to shares over the suit properties.

14. Further contention of the 6th Defendant is that all the Defendants are not prevailing with brotherhood relationship each and every one are under the position of repelled directions and more over there is misunderstanding prevailing between all the Defendants. The Defendants are not inclined to converge at one point to meet out the issues raised in this suit because all are

spread over here and there. The Plaintiff is also one of the female legal heirs and she is also entitled to equal share in the suit properties. Likewise the Defendants 1, 2, 3, 4, 6, 7 and 9 are entitled to equal shares over the suit properties which may be intended to 1/11th share legally entitled to. Not only the Plaintiff but also all the parties in the suit are legally entitled to 1/11th share over the suit properties.

15. Further contention of the 6th Defendant is that the Defendants 1, 4, 6, 7 and 9 are ready to enter into a compromise and willing to allot the respective shares not only to the Plaintiff but also to the other Defendants including the 6th Defendant and to divide equal shares according to the welfare of the legal heirs and in their favour and the benefits to be exercised to all the parties in the suit to meet out their own liabilities. The schedule mentioned gold jewells of both the parties and the same is at the hands of the 8th Defendant.

16. Further contention of the 6th Defendant is that the Defendants herein have sketch showing the identity and the total extent of the suit properties and the partition may be effected by allotting their respective shares in a suitable way to take individual possession and enjoyment of their allotted shares. The schedule of properties in the suit is Hindu Undivided Joint family properties. Hence it is just and necessary to pass a preliminary and final decree by allotting 1/11th share to the Plaintiff and also to all the Defendants who are all being the legal heirs of

late M.Subramanian including mentioned both movable and immovable properties.

17. Further contention of the 6th Defendant is that the 8th Defendant is in possession of the entire suit properties and thereby some portion of the suit property was leased out to the 3rd parties by the 8th Defendant and enjoying the mesne profits since the date of death of the father M.Subramanian for the past 8 years and the 8th Defendant has to deposit the mesne profits before this Hon'ble Court and the same may be put to shares to both the parties.

18. Further contention of the 6th Defendant is that it is therefore prayed that this Hon'ble Court may be pleased to pass a submitting preliminary and final decree of partition by allotting 1/11th share to both the Plaintiff and the Defendants and the benefits to be exercised in a suitable way in so far as Defendants and deem fit and proper in the circumstances of the case.

19. Whereas the contention of the 8th Defendant is that the case of the Plaintiff is false and fraudulent and the Plaintiff is not entitled to any relief whatsoever. Save and except those that are specifically admitted herein all other allegations contained in the plaint are denied as false and frivolous and the Plaintiff is put to strict proof of each and every allegation contained therein

20. Further contention of the 8th Defendant is that the suit as framed by the Plaintiff is not maintainable either in law or on facts. The suit has been filed for

partition only for the properties situate at Bodi and not for the properties purchased out of the business income set up by the father of the Plaintiff and the Defendants. All the properties are not included in the schedule and on this ground alone the suit is liable to be dismissed. If the Plaintiff wants to have a share in the landed properties, the jewells given to her at the time of marriage and subsequent functions and all seer has to be included in the schedule to the Plaintiff. The averments made in paragraphs IV, V, VI, VII and VIII of the Plaintiff are denied as false and incorrect besides vexatious and the Plaintiff has to strictly prove the same. The address of the 4th Defendant in the cause title is incorrect.

21. Further contention of the 8th Defendant is that the Plaintiff has twisted the facts and filed the suit. The Plaintiff has not disclosed the entire facts and she has approbated and reprobated according to her convenience. Father Subramainian while he was at the age of 7 years their grandfather died and item Nos.1 to 3 are all ancestral properties devolved on their father by inheritance and it as held and managed by his mother and grandmother of the Plaintiff and the Defendants namely Veerakamu Ammal. The said lands are solely depended on seasonal rain and out of the income from the rained lands the grandmother made a living along with the children. At the age of 19 the father got married to Vellathai Ammal.

22. Further contention of the 8th Defendant is that the grandmother of the parties to the suit gave some money from the income obtained from the agriculture derived from the said item Nos.2 and 3 lands. With the said money the father had started a business in the name and style of M.M.R.Audio Madurai Murugan Radio. The said business M.M.R.Audio in which father Subramainan would manufacture amplifiers for audio and also let speakers for hire. The Plaintiff and Defendants father was a pioneer in the filed of loud speakers renting and assembling and selling the amplifiers. For the every Institutions, Temples, Public Programmes, Musical filed, Musical functions of T.M.Soundararajan and other cinema singers he used to provide arrange speaker sets in the function or programme.

23. Further contention of the 8th Defendant is that the said M.M.R.Audio is also highlighted in various newspapers and journals. Father of the parties to the suit's achievement was published in the papers and journal successful businessman. Further in temples also the musical and amplifiers are used. The said M.M.R.Audio had branches in many places having Madurai as its head office. The said M.M.R.Audio's have branches in Bodi, Theni, Bathalagundu, Rajapalayam, Peraiyur, Coimbatore and Madras. In Madurai there were two units and in all the important places by way of agencies. Without M.M.R. mikes no renowned singers would sing and mikes and speakers were provided only by M.M.R Audios for Thiyagarajar Urchavam, Tiruchendur, Palani, Nellai Appar

Kovil. The concern is a big and in every unit there would be minimum of three staff namely one Manager and two workers. Further Audio services are rendered to cinema theatres and thus the family was earning money through the above said business founded up by father Subramanian.

24. Further contention of the 8th Defendant is that the 1st Defendant Murugan after his marriage set up a separate house. The Plaintiff and Defendants father gave him M.M.R.Audio Service business at Coimbatore area for him and now he is having a shop in Dindigul. With the income derived from the business given to him in that area he purchased properties in his name and all the properties standing in his name also to be included for partition. There is no independent income apart from the Audio Service business founded by the father as such the properties standing in his name also to be included.

25. Further contention of the 8th Defendant is that the 2nd Defendant Shanmugam got married and was given the M.M.R.Audios at 43, Cutchery Road, Mylapore and taking care of the business. Out of the said family business the 2nd Defendant has purchased house at 70A, 3rd Street, Kumaran Kudil extension, Thuraipakam Chennai-97 and another house at Ayya Construction, Sitapathi Nagar, Velachery was purchased by him and from the money funded by the Plaintiff and Defendants father from the M.M.R.Audios. After getting separate share from the family business and through said money they had

purchased the said house which is accrued from the family business. They did not turn up there after again. The said Murugan went with his wife after pregnancy festival of his wife and has come to Bodi at the time of death of the mother.

26. Further contention of the 8th Defendant is that the Plaintiff is married in 1980 and has two male children. Then she deserted her husband and came back to Bodi along with her children. The 8th Defendant alone took care of them in his house. The 8th Defendant educated the children of the Plaintiff up to 9th standard and then went with their father. The Plaintiff was given 40 sovereigns of gold at the time of marriage in the year 1980 and after the marriage also she stayed with the 8th Defendant at Bodi and she and her children were taken care by him and thereafter they to their father.

27. Further contention of the 8th Defendant is that the father of the parties did not manage the schedule mentioned properties and it is the managed by their mother who is in Bodi. Thereafter 8th Defendant was looking after the schedule mentioned properties. In the place of his father Subramanian she was looking after all the family affairs all the money for the purchase of the property at Chennai was given by him out of the income derived from the agriculture land. The lands are very rough and only cultivable when it rains. The 8th Defendant alone ploughed and planted cash trees like Mango, Coconut and after 15 years

they are ripe for yield and the lands has become Mango Grove and coconut Grove. Looking it the Plaintiff and the Defendants on ill advice had filed this false case after getting all the money from the family business and agriculture land and scheduled separate property and money. The 8th Defendant used to take lease of various agriculture land by pledging his wife's jewells and earned income. Further also by getting loan he has promoted the lands in item Nos.2 and 3.

28. Further contention of the 8th Defendant is that the 3rd Defendant Lakshmi has 4 children and two deliveries were looked after by the 8th Defendant. Further at the time of marriage sufficient sovereign of jewells were given in the year 1986. At the time of marriage itself sufficient jewells were given and she was given in marriage. Now she cannot claim any right over the said properties.

29. Further contention of the 8th Defendant is that the 4th Defendant Palani Andavar got married and was given the business at Madurai M.M.R.Audios. He has bought a house in Thirunagar out of the income form the family business. Further the good will and name of the business is used by him. He is doing sound service, Audio Service for theatre and earning out of the said business. The entire business is constituted only out of nucleus of schedule mentioned property at Bodi. Since the father of the Plaintiff and Defendants is not educated

and he lost his father at his tender age and brought up by his single widowed mother out of the agriculture.

30. Further contention of the 8th Defendant is that the 5th Defendant Arumugam was given education and studied DFT in film institute and or his education everything was given by the family business and agriculture by their father. Further he has give n money for agriculture purpose and also given money for everybody in the family in need of necessity.

31. Further contention of the 8th Defendant is that the 6th Defendant Muthukumaresan got married and divorced his wife. He is a drunkard and plays cards. He never does any work. He was taken care of by the 8th Defendant in his house. Even when he was injured with leg fracture the 8th Defendant was taking care of him. Now he is residing the front room Bodi House in item No.1 along with the 8th Defendant. The 6th Defendant is living a wayward life and making all living upon the income of the 8th Defendant.

32. Further contention of the 8th Defendant is that the 7th Defendant Kandasamy was looking after the Madras Shop M.M.R.Audios and another one he started separately as Junior M.M.R and took all the business in that Mankadu, Thiruvertriyoor area. He got love married and living in Perambalur. He purchased property in Perambalur form the income of the said business and living therein.

33. Further contention of the 8th Defendant is that the 9th Defendant Balasubramanian studied from the income of M.M.R.Audio and agriculture income of the schedule mentioned property and working as lecturer at Pune. He is unmarried and living at Pune. The 8th Defendant is looking after him and resides in his house when he comes to Bodi. Further on the ill advice of the other Defendants he has just signed in the written statement without any regard to the consequences. The said 9th Defendant is taking care of his elder sister Lakshmi the 3rd Defendant herein and her children. On her instigation he has filed the statement without regard to the real facts.

34. Further contention of the 8th Defendant is that the 10th Defendant Swaminathan is living in Chennai and unmarried. The Defendants had earned income form the family business M.M.R.Audios and also took separate business and purchased property and schedule house property at Chennai, Thirunagar Madurai which has to be also included in the common hotchpot of the Partition for a fair and just partition.

35. Further contention of the 8th Defendant is that the 1st item of the suit property is a house property having an extent of 5 cents, house tax receipts stands in the name of father. The 8th Defendant is living therein and has looked after father and mother till their last days. None of them came even for death of the mother on 29.01.2013 the Palani Andavar did not come to the same who

living in Madurai. He did not even choose to see his mother or do any final rituals to his own mother and such a very cruel minded person. Now after secluding income form the Audio Business he has purchased house property at Thirunagar Madurai after such a long period as the 8th Defendant has improved the agriculture land he is claiming property without bring the property earned from the nucleus of the ancestral property. With great circumspection he has purchased in the name of his wife.

36. Further contention of the 8th Defendant is that the 2nd item is landed property in S.No.921 having an 1.94.5 hectares in Patta No.837 in the name of father M.Subramanian the 8th Defendant reclaimed the said lands and created coconut grove, guava and dig well. None of them have come to the lands at any point of time and they do not know about it. The 8th Defendant fought with the neighbours and protected the lands and improved the same when the other Defendant and Plaintiff took the profit of the family business and 8th Defendant was looking after agriculture by pledging his wife jewellery and digging well and fixing motor and pipes. The Defendants and Plaintiffs are saying to cut the threes and close the well and go away. They are not interested to do agriculture and they want to destroy it. They have never given any money to the worker. All along they would ask money for club activities while doing their Audio business the 8th Defendant while doing agriculture work was chased by wild bull and he escaped by jumping into well and there was less water and his knee was injured.

37. Further contention of the 8th Defendant is that even when the father fell in the Madurai shop the 4th Defendant Palani Andavar did not care for him. Even after his death he did not come to Bodi nor attended his funeral even when he was in Madurai. Further Lakshmi the 3rd Defendant Balasubramanian the 9th Defendant did not come to death of their father though the said Lakshmi's husband was in Natham at that time. Even for the 10th day function the Palani Andavar the 4th Defendant the Lakshmi the 3rd Defendant Balasubramanian the 9th Defendant did not come to anything. Now they are claiming property.

38. Further contention of the 8th Defendant is that the ashes of the mother and father mortal remains is kept in the 3rd item of the property in S.No.941 and build a Samathi in that place. Further a Siva Temple is also there which is situated in 3 acres out of 16 acres. Moreover it is rocky area and no plantation is there in 3 acres of land. Further without adding the properties purchased out of the family business the Plaintiff has asked for partition only the properties in Bodi though there are properties at Thuraipakkam, Perambalur, Chennai and Thirunagar, Madurai when the Plaintiff who has not chosen even to participate in the death of her father or on the 10th day function or even on subsequent days she is claiming right over the property without doing her pious obligation as a daughter. Further the 3rd Defendant 9th Defendant who did not done their pious obligation to do last rites and subsequent rights of their father has no right to claim any right in the property on the ground of equity. The 4th Defendant

neither came to the death of his mother or father nor looked in their last days or for the subsequent rituals of 10th day has no right to claim property. Further the Defendants 1, 2, 4, 7 who have considerable property out of the family business without rendition of accounts nor the properties purchased out of the said income cannot claim share partially in the schedule mentioned property.

39. Further contention of the 8th Defendant is that the wish of their father is to maintain the property for another one generation so that it will survive and maintain the Samathi ash of their mother kept in item No.3. Further the Samathi Asthi of the mother and father is placed and Siva Temple is built therein in item No.3. for the Kumba Abishkam of the said Siva Temple in which the asthi kept only Murugan the 1st Defendant and Swaminathan 10th Defendant alone participated. The Plaintiff and the Defendants are no least regard to the property mentioned in the schedule and they never came to the schedule property and they are not in joint possession or enjoyment of the same. They do not know the lie and location of the schedule mentioned property. The Plaintiff and Defendants were not interested in maintaining lands and they want to destroy the same and sell away. Without including all the properties asking for partition is not maintainable.

40. The contention of the 10th Defendant is that the suit is not maintainable under law and on facts. The Plaintiff is not entitled to the relief she claimed. The

father of the Defendants and Plaintiff namely Subramani is the son of Masanam and Veerakamulu Ammal. It is true that the said Masanam and Veerakamulu Ammal had house and landed properties. The said Masanam and Veerakamulu died leaving behind them one son Subramani and three daughters as their legal heirs. As per law the estate left by later Masanam and Veerakamulu Ammal was inherited by the said Subramani and his three sisters. The said Subramani and his three sisters orally partitioned among them the properties mentioned in the suit was allotted to Subramani. The relationship narrated in the paragraph IV of the Plaint is admitted as true and correct.

41. Further contention of the 10th Defendant is that the said Masanam and Veerakamulu Ammal were in possession and enjoyment of the suit properties till their death. The allegation that after the demise of the said Masanam and Veerakamulu Ammal the said Subramani became entitled to the suit properties is denied as false and fraudulent. It is admitted that the father of Plaintiff and Defendants died on 10.11.2013 and their mother Vellaithai pre-deceased their father. The allegation in paragraph V of the Plaint that the suit properties are in joint possession and enjoyment of Plaintiff and Defendants is denied as false and fraudulent. Though the suit properties as on date stands in the name of Subramani the father of Plaintiff and Defendants he was not entitled to the entire properties. The house tax receipt and Patta are not documents to prove the title over the properties.

42. Further contention of the 10th Defendant is that there is no jewells belongs to the joint family. Since the mother of the Plaintiff and Defendants pre-deceased their father and all the jewells were given in possession of their father. It is further submitted that father sold the jewells and used the money for the welfare of the family. There is no jewells available in the joint family for partition. The allegation that the facts and documents mentioned above will clearly establish that the Plaintiff along with the Defendants 1 to 10 have joint right as well as they are in joint possession and enjoyment of the suit properties is denied as false and fraudulent.

43. Further contention of the 10th Defendant is that the allegation in paragraph VIII of the Plaint that now all the Defendants are not in talking terms with the Plaintiff and colluded together started to act detrimental towards the interest of the Plaintiff in respect of the suit properties is denied as false and fraudulent. The further allegations that all the Defendants colluded together attempted to alienate and encumber the suit properties are denied as false and fraudulent. In fact the Plaintiff filed this suit at the instigation of few Defendants arrayed as parties in this suit. The Plaintiff is not entitled to 1/11th share in the suit properties. The 4th item of the suit property is only an imagination.

44. Further contention of the 10th Defendant is that the allegation that the Plaintiff requested the Defendants number of times for partition and the

Defendants adopted delaying tactics is denied as false and fraudulent. The 10th Defendant did not receive any notices alleged in paragraph VIII of the plaint.

45. Further contention of the 10th Defendant is that the Plaintiff is ousted from the suit properties and she failed to claim their share in the suit properties within the prescribed period of time and in the result the Plaintiff cannot claim any shares over the suit properties. The suit filed by the Plaintiff at the ill advise and instigation of the 2nd Defendant.

46. Further contention of the 10th Defendant is that the father of the Plaintiff and Defendants during his life time operation Sound Service in the name and style of MMR [Mamdurai Murugan Radios]. He was rendering mike and sound service for big music events or concerts such as Thiruvaiyaru, Palani Temple, Thirunelveli, Thiruchendur etc. the said MMR is a well-known mike and radio operator in Tamilnadu. The said business is under the sole proprietorship of the said Subramani. After the death of the father business in the name and style of MMR taken over by 4th Defendant and he is in charge of the business for the joint family. The Plaintiff purposely with bad intention omitted to add the family business in this suit. Hence the suit is liable to be dismissed.

47. By way of filing reply statement further case of the Plaintiff is that the contents of the written statement filed by the 7th and 8th Defendant are all absolutely false and incorrect misleading and fraudulent. The allegations in

paragraphs 4 to 23 of the written statement are all denied as false and incorrect misleading and fraudulent and these allegations are all invented for the purpose of the filing the written statement.

48. Further case of the Plaintiff is that the allegation that the grandmother gave some money from the income derived from agriculture to the father of the Plaintiff and Defendants and started business of manufacturing amplifiers for audio and then the Plaintiff's father started many branches in respect of his business namely MMR Audio and then the family of the Plaintiffs and Defendant earned money with the income derived from the business and the Plaintiff's father purchased properties in his name and all the properties standing in his name also to be included for partition and the 2nd Defendant Shanmugam got married and started business in the name and style of MMR Audio at Mylapore and out of the said family business the 2nd Defendant purchased a house at Thuraipakkam at Chennai and another house at Velachery and the said properties had been purchased by him through the income accrued from the family business are all absolutely false and incorrect and the Defendant should strictly prove the same.

49. Further case of the Plaintiff is that the allegation that the Plaintiff deserted her husband and came back to Bodi and the 8th Defendant took care of the Plaintiff and her children and educated the children of the Plaintiff and the 8th

Defendant made all arrangements to the marriage of the Plaintiff by giving 40 sovereigns of gold at the time of marriage in the year 1980 and after the marriage also she stayed with the 8th Defendant at Bodi and she and her children were taken care by him are all absolutely false and incorrect.

50. Further case of the Plaintiff is that the allegation that the 8th Defendant was looking after the schedule mentioned properties and he was looking after all the family affairs all the money for the purchase of the property at Chennai was given by him out of the income derived from the agriculture land and the 8th Defendant alone ploughed and planted cash trees like Mango, Coconut and after 15 years they are ripe for yield and the lands has become Mango Grove and coconut Grove. Looking it the Plaintiff and the Defendants on ill advice had filed this false case after getting all the money from the family business and agriculture land and the 8th Defendant used to take lease of various agriculture land by pledging his wife's jewells and earned income and also by getting loan he has promoted the lands in item Nos.2 and 3 are all false and fraudulent.

51. Further case of the Plaintiff is that the allegation that the 4th Defendant Palani Andavar purchased a house in Thirunagar out of the income form the family business and accordingly the 5th Defendant Arumugam was given education and studied DFT in Film Institute and for his education everything was given by the family business and the 6th Defendant Muthukumaresan is a

drunkard and playing cards and he never does any work and he was taken care of by the 8th Defendant in his house and the 6th Defendant is living a wayward life and making all living upon the income of the 8th Defendant are all false and incorrect, misleading and fraudulent.

52. Further case of the Plaintiff is that the allegation that the 8th Defendant Kandasamy purchased a house in Perambur from the income of the family business of Chennai and the 9th Defendant Balasubramanian studied from the income of the family business and income from the agricultural lands and the 9th Defendant is taking care of his sister Lakshmi and her children and at her instigation the 9th Defendant filed a statement and the 10th Defendant Saminathan is living in Chennai and with the income of family business they took separate business and purchase property at Chennai, Thirunagar and all the purchased properties of them have to be included in the common hotchpot of the partition are all absolutely false, incorrect, misleading and unfounded.

53. Further case of the Plaintiff is that the allegation that in the suit 1st item the 8th Defendant is living and looked after his father and mother till their last days and none of them came for the death of their mother for doing final rituals are all absolutely false and incorrect. The allegation that the 8th Defendant reclaimed the suit item 2 and created coconut grove guava and dig well and neither of them have not come to the lands at any point of time and they do not

know about it and the 8th Defendant fought with the neighbours and improved the same and when the other Defendants and Plaintiff took the profit of the family business and the 8th Defendant was looking after agriculture by pledging his wife's jewelry and digging well and fixing motor and pipes and the other Defendants and Plaintiff are saying to cut the true and close the well and go away and they are not interested to do agriculture and they want to destroy it are all absolutely false and incorrect and the 8th Defendant should strictly prove the same. It is false to allege that the 8th Defendant has given money for the Defendants' audio business and while he was doing agricultural work he was chased by wild bull and he escaped by jumping into well and there was less water and his knee was injured.

54. Further case of the Plaintiff is that the allegation that the Plaintiff and the Defendants did not come to Bodinayakanur to attend the funeral of their father and for the 10th day ritual and the Defendants did not come and now claiming property are all false and incorrect. It is false to allege that the ashes of the father and mother are kept in item 3 of the suit property and built a Samathi in that place and further a Siva Temple is also there in the suit land. The body of the father and mother are not buried, on the other hand their bodies were fired and the ashes of them were left in Rameshwaram and Suruli Theertham. The 8th Defendant knows pretty well about the same. There is no Samathi in the suit property and no Siva Temple in the suit property as alleged by him. Except the

suit property there is no other property for the father and mother of the parties to the suit. The other properties alleged by the 8th Defendant are not the properties of their parents. In-order to contest and drag on the partition proceedings the 8th Defendant filed a false and vexatious written statement and there is no merit in it.

55. Further case of the Plaintiff is that the repeated allegation that the Plaintiff has not attended the death ceremony of her father and the 10th day ritual and she is claiming right over the suit property without doing her pious obligation as a daughter are all denied as false and incorrect.

56. Further case of the Plaintiff is that the allegation that the wish of their father is to maintain the property for another one generation so that it will survive and maintain the Samathi ash of their mother kept in item No.3 and the Samathi asthi of their mother and father is placed and Siva Temple is built there in item No.3 and the Plaintiff and Defendants never cared for the ashes and Samathi and the Plaintiff does not know the location of the suit properties and she is not intended in maintaining the lands and went to destroy the sale are all false and incorrect.

57. Further case of the Plaintiff is that there is no merit in the written statement filed by the 8th Defendant. Except the suit properties no other properties are liable for partition in the family. The 8th Defendant never gave any money to the

plaintiff and he never taken care of the Plaintiff's family. The Plaintiff is entitled to get share in the suit property as alleged in the Plaint. The 8th Defendant cannot curtail the right and share of the Plaintiff in the suit property. The Plaintiff has got 1/11th share in the suit properties and all the Defendants should come forward to divide the suit properties and allot the Plaintiff's 1/11th share in it.

58. This court has given its anxious consideration on the rival contentions of both the parties. On perusal one Masanam and Verrakamullu Ammal are grandparents of the parties to the suit. Further they had a son by name Subraani who is none other than the father of the parties to the suit. The said Subramani married one Vellaithai. Through her the said Subramani had 9 sons and 2 daughters by name Murugan, Shanmugam, Palani Andavar, Arumugam, Muthukumarasan, Kandasamy, Somasundram, Balasubramani, Swaminathan, Lakshmi [the Defendants 1 to 10 herein] and one Meenakshi the Plaintiff herein. In respect of the relationship of the parties to the suit there is no quarrel or dispute between the parties. Further in respect of the nature of the suit property also there is no dispute between the parties.

59. However the case of the Plaintiff is that the suit properties 1 to 3 consist of a house and landed properties and the suit properties 1 to 3 originally and ancestrally belonged to her grandparents Masanam and his wife Verrakamulu

Ammal. The Plaintiff would further state that the above said Masanam and Veerakamulu Ammal were in possession and enjoyment of the suit properties. After the demise of the above said Masanam and his wife Veerakamulu Ammal the father of the Plaintiff Subramani became entitled to the suit properties and he was in possession and enjoyment of the same. The father of the Plaintiff namely Subramani died on 10.11.2013 and her mother Vellaithai predeceased her father and died on 29.01.2013. The Plaintiff and the Defendants are the legal heirs of the deceased Subramani and Vellaithai. After the demise of the parents of the Plaintiff as well as the Defendants namely Subramani and Vellaithai the Plaintiff along with the Defendants 1 to 10 became entitled to the suit properties and they are in joint possession and enjoyment of the same.

60. The Defendants 1 to 4, D6, D7 and D9 are supporting the case of the Plaintiff. The Defendants 8 and 10 alone are contesting the suit against the Plaintiff. At the outset neither the 8th defendant nor the 10th defenant deny the right of the Plaintiff over the 1 to 3 suit properties. However the contention of the 8th Defendant is that out of the income derived from the ancestral properties his father Swamination started a radio business in the name and style of MMR Radios and out of the income derived from MMR Radios all the sons of Saminathan except the 8th Defendant purchased properties in various places in Tamil Nadu and without including those properties purchased out of the income derived from the family business the suit is bad for partial partition. Further

contention of the 8th Defendant is that father Subramani was successfully running MMR Radios until his death. However that family business is not added in the suit schedule of properties. Hence on this score also the suit is liable to dismissed for partial partition.

61. However the 8th Defendant has not made any attempt to prove his above said contention. Rather without any pleadings in the written statement the 8th Defendant during trial, in the cross examination of PW-1 and in his evidence would allege and depose that after the demise of Masanam and Veerakamulu Ammal landed property devolved upon the said Subramani and his three sisters, and hence as the three sisters / their legal heirs are not arrayed as parties to the suit, the suit is liable to be dismissed as non-joinder of necessary parties.

62. However as stated earlier the 8th Defendant has not pleaded about the non-joinder of the necessary parties in his written statement. The main contention of the 8th Defendant in the written statement is that the properties purchased out of the income of the family business and the family business MMR Radios was not included in the suit schedule of properties and hence the suit is liable to be dismissed for partial partition. Further even after the filing of written statement of 10th Defendant the 8th Defendant has not come forward to amend his pleadings in the written statement.

63. Further though the 10th Defendant allege that his father Subramani alone is not entitled for the suit properties however he has categorically stated in the written statement that his father Subramani and his three sisters orally partitioned among them the properties left behind Masanam and Veerakamulu Ammal and the suit properties 1 to 3 were allotted to Subramani and during cross examination of PW1 she also deposed that oral partition was effected between her father and his sisters.

64. Further though 10th defendant (DW2) deposed that properties were not given to the three sisters of his father however admittedly his father Subramani died on 10.11.2013. Neither 10th Defendant nor the 8th Defendant pleaded that whether the sisters of Subramani or their legal heirs have claimed any right over the suit 1 to 3 properties during the life time of Subramani.

65. Further even on the perusal of the written statement of the 10th Defendant it is evident that with half-heart he has stated that all the legal heirs of Masanam and Veerakamulu Ammal are having right in the suit properties. Hence without any specific pleadings now the Defendants 8 and 10 cannot deny the claim of the Plaintiff alleging that all the legal heirs of Masanam and Veerakamulu Ammal are entitled for the 1 to 3 suit schedule properties. From the statement of the 10th Defendant and from the evidence of PW1 it is presumed that after the

demise of Masanam and Veerakamulu Ammal oral partition was effected and the suit 1 to 3 properties were allotted to Subramani.

66. Now coming to the contention of the 8th Defendant that all the sons except him purchased various properties in various parts of Tamil Nadu; it is the contention of the 8th Defendant that the suit has been filed for partition only for the properties situate at Bodi and not for the properties purchased out of the business income set up by the father of the Plaintiff and the Defendants. All the properties are not included in the schedule and if the Plaintiff wants to have a share in the landed properties, the jewells given to her at the time of marriage and subsequent functions and all seer has to be included in the schedule to the Plaintiff.

67. The 8th Defendant would further contend that the grandmother of the parties to the suit gave some money from the income derived from the items 2 and 3 of the suit properties and with the said money the father had started a business in the name and style of M.M.R.Audio Madurai Murugan Radio. The said M.M.R.Audio's have branches in Bodi, Theni, Bathalagundu, Rajapalayam, Peraiyur, Coimbatore and Madras. In Madurai there were two units and in all the important places by way of agencies. Without M.M.R. mikes no renowned singers would sing and mikes and speakers were provided only by M.M.R

Audios for Thiyagarajar Urchavam, Tiruchendur, Palani, Nellai Appar Kovil. The family concern is a big one and in every unit there would be minimum of three staff namely one Manager and two workers. Further Audio services are rendered to cinema theatres and thus the family was earning money through the above said business founded up by father Subramanian.

68. The 8th Defendant would further contend that the 1st Defendant Murugan after his marriage set up a separate house and father Subramani gave him M.M.R.Audio Service business at Coimbatore area for him and now he is having a shop in Dindigul. With the income derived from the business given to him in that area he purchased properties in his name and all the properties standing in his name also to be included for partition. There is no independent income apart from the Audio Service business founded by the father as such the properties standing in his name also to be included.

69. The 8th Defendant would further contend that the 2nd Defendant Shanmugam got married and was given the M.M.R.Audios at 43, Cutchery Road, Mylapore and taking care of the business. Out of the said family business the 2nd Defendant has purchased house at 70A, 3rd Street, Kumaran Kudil extension, Thuraipakam Chennai-97 and another house at Ayya Construction, Sitapathi Nagar, Velachery was purchased by him and from the money funded by the Plaintiff and Defendants father from the M.M.R.Audios. After getting separate

share form the family business and through said money they had purchased the said house from the income of the family business.

70. The 8th Defendant would further contend that the 4th Defendant Palani Andavar got married and was given the business at Madurai M.M.R.Audios and he has purchased a house in Thirunagar out of the income from the family business. Further the good will and name of the business is used by him. He is doing sound service, Audio Service for theatre and earning out of the said business. The entire business is constituted only out of nucleus of schedule mentioned property at Bodi.

71. The 8th Defendant would further contend that the 5th Defendant Arumugam was given education and studied DFT in film institute and for his education amount was given from the family business and from the income derived from in agriculture by their father.

72. The 8th Defendant would further contend that the 6th Defendant Muthukumaresan got married and divorced his wife. He is a drunkard and used to plays cards. He never does any work and he was taken care of by the 8th Defendant in his house. Even when he was injured with fracture in his leg it is the 8th Defendant who was taking care of him. Now he is residing the front

room in item No.1 along with the 8th Defendant. The 6th Defendant is leading a wayward life and making all living upon the income of the 8th Defendant.

73. The 8th Defendant would further contend that the 7th Defendant Kandasamy was looking after the Madras Shop M.M.R.Audios and another one he started separately as Junior M.M.R and took all the business in that Mankadu, Thiruvertriyoor area and he is living in Perambalur. He purchased property in Perambalur from the income of the said business and living therein.

74. The 8th Defendant would further contend that the 9th Defendant Balasubramanian studied from the income of M.M.R.Audio and agriculture income of the schedule mentioned property and working as lecturer at Pune. He is unmarried and living at Pune. The 8th Defendant is looking after him and resides in his house when he comes to Bodi. Further on the ill advice of the other Defendants he has just signed in the written statement without any regard to the consequences. The said 9th Defendant is taking care of his elder sister Lakshmi the 3rd Defendant herein and her children. On her instigation he has filed the statement without regard to the real facts.

75. The 8th Defendant would further contend that the 10th Defendant Swaminathan is living in Chennai and unmarried. The Defendants had earned income form the family business M.M.R.Audios and also took separate business and purchased property and schedule house property at Chennai, Thirunagar

Madurai which has to be also included in the common hotchpot of the Partition for a fair and just partition.

76. The 8th Defendant would further contend that the Plaintiff is married in 1980 and has two male children. Then she deserted her husband and came back to Bodi along with her children. The 8th Defendant alone took care of them in his house. The 8th Defendant educated the children of the Plaintiff upto 9th standard and then went with their father. The Plaintiff was given 40 sovereigns of gold at the time of marriage in the year 1980 and after the marriage also she stayed with the 8th Defendant at Bodi and she and her children were taken care by him and thereafter they to their father.

77. The 8th Defendant would further contend that the father of the parties did not manage the schedule mentioned properties and it is managed by their mother who was in Bodi. Thereafter 8th Defendant was looking after the schedule mentioned properties. In the place of his father Subramanian she was looking after all the family affairs all the money for the purchase of the property at Chennai was given by him out of the income derived from the agriculture land. The lands are very rough and only cultivable when it rains. The 8th Defendant alone ploughed and planted cash trees like Mango, Coconut and after 15 years they are ripe for yield and the lands has become Mango Grove and Coconut Grove. Hence on ill advice now the Plaintiff has filed this false

case. The 8th Defendant used to take lease of various agriculture lands and further by pledging his wife's jewells he cultivated the agricultural lands and earned income. Further by getting loan he has promoted the lands in item Nos.2 and 3.

78. The 8th Defendant would further contend that the 3rd Defendant Lakshmi has 4 children and two deliveries were looked after by the 8th Defendant. Further at the time of marriage sufficient sovereign of jewells were given in the year 1986. At the time of marriage itself sufficient jewells were given and she was given in marriage. Now she cannot claim any right over the said properties.

79. On a careful perusal of the above though the 8th Defendant elaborately stated in his written statement that all his brothers purchased properties out of the income derived from the family business and out of the income derived from the agricultural properties; however absolutely no piece of evidence is adduced by him to prove his stand. No steps taken by him to substantiate his contention. Rather without any pleadings in his written statement as an afterthought during trail he made a vain attempt to deny the claim of the Plaintiff by alleging that the suit is bad for non-joinder of necessary parties which is not supported by any material evidence.

80. Admittedly the 1st item of the suit property is a house property having an extent of 5 cents and house tax receipts stands in the name of father. Similarly

the 2nd item is landed property in S.No.921 having an 1.94.5 hectares in Patta No.837 in the name of father M.Subramanian and the 3rd item of the property is in S.No.941 and admittedly it is the 8th Defendant who is in possession and enjoyment of the same. Though 8th Defendant contends that it is he who maintained the suit properties 1 to 3 with great difficulty he has not categorically deny the rights of the other parties to the suit. Rather it is his contention that as the properties allegedly purchased by his brothers out of the income of the family business and from the income derived from the agricultural lands were not included in the suit schedule of properties suit is hit by partial partition.

81. However the contention of the 8th Defendant is not merit in acceptance. Since the 8th Defendant has not taken any step to substantiate his contentions by placing material evidence. Hence the contention of the 8th Defendant cannot be taken into consideration in respect of the suit properties 1 to 3 and hence the suit is not hit by partial partition. Hence this court is of the considered view that the Plaintiff is entitled for her share in the suit schedule of properties 1 to 3.

82. Now coming to the 4 item of the suit property though the Plaintiff alleged that jewells belongs to the mother is also to be partitioned among the parties to the suit, however the Plaintiff has not categorically state as to who is in possession of those jewells. And no evidence is available in respect of the same.

None of the other Defendants supported the case of the Plaintiff in respect of the jewells of the mother of the parties. Similarly though 6th Defendant alleges that jewells are with 8th Defendant however no piece of evidence is available.

83. Therefore taking into consideration of the above this Court is of the considered view that the suit is not hit by partial partition and the Plaintiff is entitled for her legitimate 1/11th share in the suit schedule properties 1 to 3 and hence issue Nos.2 to 6 are answered accordingly.

ISSUE NO.1:-

Whether the suit properties are ancestral properties of the Plaintiff's family?

84. As it is admitted fact that the suit properties 1 to 3 are ancestral in nature and no one questioned about the nature of the said properties this issue becomes redundant. Hence this issue is answered accordingly.

ISSUE NO.7:- To what other reliefs the Plaintiff is entitled for?

85. Taking into consideration of the facts and circumstances of the case in hand the Plaintiff is entitled for Permanent Injunction as against the defendants and as Defendants No. 1 to D4, D6, D7, D9 paid Court fees they are also entitled for their respective 1/ 11th share in the 1 to 3 suit properties and hence this issue is answered accordingly.

In the result,

- i. The suit is allowed with cost and preliminary decree is passed; and
- ii. Permanent Injunction is granted as against the defendants not to alienate the 1/11th share of the Plaintiff and the suit is adjourned sine die.

Dictated to Steno-typist and typed by her on the computer directly, corrected and Pronounced by me in open Court on this the 16th day of March 2022.

**Principal District Judge,
Theni.**

Annexure:-**Plaintiff side Witness:-**

PW1. Meenakshi (Plaintiff)

Plaintiff side Marked Documents:-

Ex.A1	--	Genealogy Table (Original)
Ex.A2	04.07.2019	Death Certificate in the name of Subramani (Original)
Ex.A3	27.03.2015	Legal Heir Certificate of Subramani (True Copy)
Ex.A4	10.07.2015	Property Tax Receipt in the name of Subramani (Original)
Ex.A5	11.07.2015	Kist Receipt in the name of M.S. Muthukumaresan and Brothers
Ex.A6	18.07.2015	Legal notice of Plaintiff with Postal Receipt (Original)
Ex.A7	--	Acknowledgement Card received by 8 th Defendant

Defendants side Witnesses:-

DW1. Thiru. S. Somasundaram (8th Defendant)

DW2. Thiru. S. Swaminathan (10th Defendant)

Defendants side Marked Documents:-

Ex.B1	11.12.1980	Marriage Invitation of Plaintiff (Original)
Ex.B2	--	Genealogy Table (Original)
Ex.B3	--	Computerized Patta in the name of Veerakamulammal (downloaded copy)
Ex.B4	--	Computerized Patta in the name of Subramani (Downloaded Copy)
Ex.B5	01.03.2016	Memo of Tahsidar of Bodinayakanur (Xerox Copy)
Ex.B6	15.02.2003	Letter issued by Palani Arulmigu Dhandayuthapani Swamy Thirukovil (Original)
Ex.B7	11.05.1994	Century Ceremony Letter in the name of Late. P.A.C. Ramasamy Raja (Original)
Ex.B8	--	Advertisement of MMR Television Institute (Original)
Ex.B9	--	Telephone Bill (Downloaded Copy)

**Principal District Judge,
Theni.**

The Principal District Court,

Theni.

O.S.No. 59/2015

Fair/Draft Judgment

Date: 16.03.2022