

**IN THE COURT OF II ADDITIONAL DISTRICT & SESSIONS JUDGE, THANJAVUR.**

Present : Thiru.**N.Balasubramanian**, M.A.,B.L.,  
II Additional District & Sessions Judge, Thanjavur.

Wednesday the 22nd day of July 2015.  
(Thiruvalluvar Andu 2046 Sri Manmatha Varudam - Aadi Matham 06th day)

**ORIGINAL SUIT NO : 135/2008**

Arokiamary ... Plaintiff  
VS

01) Mariyamuthu  
02) Jesuraj  
03) Leela @ Leela Rosaline  
04) Sagayamary  
05) Dhaineshmary  
06) Johnpeter  
07) The Sub Registrar,  
Thanjavur.  
08) The District Collector, Thanjavur.  
09) Muthumary @ Arokiamary ... Defendants  
(The 9th defendant amended as per  
order in I.A.344/2014 DT:12.11.2014)

This suit was taken on file on 23.09.2008 on the file of the Principal District Court, Thanjavur and made over to this Court for disposal. In this Court this case was coming up for final hearing on 13.07.2015 in the presence of Thiru.K.Ramanathan, Advocate for Plaintiff and Thiru.R.Mathiyalagan, Advocate for the Defendants 1 to 3 and Thiru.A.G.Thangappan, Government Pleader for the Defendants 7 & 8 and Thiru.S.Jesudas, Advocate for the 9th defendant and the defendants 4 & 5 called absent become set exparte, and heard the arguments of both sides and having stood over for consideration till this day, this court delivered the following,

**JUDGMENT**

Suit for Preliminary Decree for Partition of plaintiff's 1/9th share and for permanent injunction against the defendants and costs.

**Plaintiff's case in Brief:**

01) The suit property belong to the father of the plaintiff by name Durairaj @ Kulandaisamy. He died intestate on 18.12.1987. The said Durairaj @ Kulandaisamy left

his wife Mariamuthu the 1st defendant and his children namely, the plaintiff and defendants 2 to 6. As per Indian Succession Act Sec.33 the 1st defendant is entitled to 1/3rd share and in the remaining 2/3rd share the plaintiff and the defendants 2 to 6 jointly entitled. So, the plaintiff is entitled to 1/9th share in the suit properties. On 05.06.1998 there was a panchayat in the family to divide the property by allotting 1/7th share each and in the said partition, plaintiff's father's sister was also added. Hence, the plaintiff not agreed for that partition. In the mean time, the defendants 2 & 6 attempted to sell some of the suit properties. Hence, the plaintiff was constrained to sent a legal notice and after that the plaintiff demanded partition. But the defendants failed to effect partition and also sent a notice to the 7th & 8th defendants not to register the document. The defendants not complied the request of the plaintiff. Hence the suit.

**Defendants case in Brief:**

02) The 2nd defendant filed a written statement and the defendants 1 & 3 adopted the same. The 2nd defendant stated that the suit properties are not belong to the father of the plaitniff Durairaj @ Kulandaisamy and they have originally belonged to one Chinnaiya Udayar who is the grandfather of the plaintiff. He died intestate during the year 1984 leaving behind two daughters and one son. The elder daughter of Chinnaiya Udayar by name Lourthumary Ammal filed a suit before the Sub Court, Thanjavur in O.S.No:52/1990 and it was ended into a compromise by allotting 2 items of the suit property for her share. The remaining properties were joint with the said Durairaj @ Kulandaisamy and younger daughter Muthumary Ammal @ Arockiamary. After the death of said Durairaj @ Kulandaisamy there was a partition on 22.05.2000 between the said Muthumary Ammal @ Arockiamary and the defendants 1,2 and 6. From the date of partition the said Muthumary Ammal @ Arockiamary was in possession of the partitioned property and in the year 2007 the above said Muthumary Ammal @ Arockiamary gifted her share to her daughter by name Rexi. This defendant never agreed to allot 1/7th shares of the suit properties to the plaintiff at any point of time. The suit properties are originally belong to Chinnaiya Udayar therefore the daughters of Chinnaiya Udayar has got right over the suit properties. Hence, the suit has to be dismissed.

ii) The 7th defendant filed a written statement and 8th defendant adopted the same. The 7th defendant is entitled to register any valid document, if it is in order under the provisions of the registration Act. It is the bounden duty of the 7th defendant to register the sale, there cannot be any permanent prohibition as against the 7th defendant from registering the document which is liable to register under the Act. On this ground alone the

suit liable to be dismissed. Regarding partitions are concerned these defendants are no way connected. These defendants are all unnecessary parties to the suit. Hence, the suit has to be dismissed with regard to these defendants.

**03) Issues are recausted as follows:**

- 01 Whether the plaintiff is entitled to a partition of 1/9th share in the suit properties?
- 02 Whether the 9th defendant is entitled to a partition of 1/2 share as prayed for?
- 03 Whether the plaintiff is entitled to a relief of permanent injunction as prayed for?
- 04 To what relief the plaintiff is entitled to?

**Issue No:1**

04) The suit properties originally belonged to one chinnaiya Udayar. He got one son and two daughters. Already there was a litigation between the legal heirs of said Chinnaiya Udayar. The said litigation with regard to partition of properties of Late.Chinnaiya Udayar. With regard to this fact Ex.B1 was marked. Ex.B1 is the certified copy of compromise decree passed in O.S.52/1990 on the file of Sub. Court, Thanjavur. In the above said Ex.B1 compromise decree in the suit properties item No;5 a portion measuring 22 kuzhilies in Survey No:199/12 in Item No;7 1 acre 26 cents in Survey No:85/6 were allotted to the plaintiff in that case in O.S.52/1990. For easy understanding, the Genealogy Tree will reflect the relationship of parties to the earlier proceedings and in this proceedings.

<b>CHINNAIYA UDAYAR</b>					
Durairaj @ Kulandaisamy		Lourdhu Mary		Muthumary @ Arockiamary	
= ↓					
Maria Muthu – 1st Defendant – Wife of Durairaj @ Kulandaisamy					
↓					
Arokiamary <i>Plaintiff</i>	Jesuraj <i>2nd deft</i>	Leela@ Leela Rosalin <i>3rd deft</i>	Sahayamary <i>4th deft</i>	Dhaineshmary <i>5th deft</i>	John peter <i>6th deft</i>

As per Ex.B1 one of the daughter by name Muthumary @ Arokiamary and her brother the father of the plaintiff in this case Durairaj @ Kulandaisamy were jointly enjoying the remaining properties in the above said compromise decree. After the demise of the said Duraisamy @ Kulandaisamy there was a registered partition. In the family of the plaintiff a

registered partition deed was executed on 22.05.2000. In the above said document the 9th defendant in the suit was arrayed as a 4th party. The above said partition was effected between the wife and two sons and sister of the Durairaj @ Kulandaisamy. In the above said partition, the sister of the Durairaj @ Kulandaisamy by name Arockiamary W/o.Ubakarasamy was allotted with 'D' schedule property. In this case, the said Arockiamary was originally not impleaded subsequently she was added as a party as 9th defendant. The 9th defendant during cross examination has admitted her signature in the above said partition deed. The signature was marked as ExA8. The wife and male children of the said Durairaj @ Kulandaisamy alone partitioned the properties without impleading the female children of the said Durairaj @ Kulandaisamy. Even though the plaintiff demanded partition they refused. Hence, the plaintiff came forward with the suit for partition. This is the facts elicited from the both sides documents. But the plaintiff has not disclosed all these facts. She simply stated that the suit properties belong to her father and the defendants refused to effect partition. Hence, she came forward with the partition suit. The previous history of the suit properties and previous litigation partitions were disclosed by the plaintiff. After the arrival of the 9th defendant as a party to this proceedings, the plaintiff came forward with Ex.A8.

05) The relationship of the parties are not disputed and admitted. Previous partition suit and compromise decree in O.S.52/1990 was also admitted by both parties. So, now let us travel from the said partition suit compromise decree. Admittedly, the suit properties mentioned in the Ex.B1 compromise decree except two items allotted to the sister of the Durairaj @ Kulandaisamy, the remaining properties Item Nos: 1 to 6 shown as schedule in this plaint. In the plaint schedule in Item No:2 out of 5 acres 1.66-2/3 cents allotted to the 9th defendant as 'D' schedule in the above said partition which is marked as Ex.B1. In the remaining properties, the plaintiff sought for partition. Admittedly, the plaintiff and the defendants 1 to 6 are the wife and children there is no dispute. Indian Succession Act dealt with the succession Indian Christians. The relevant provision under this Act is as follows:

*In Sec.33(a) of Indian Succession Act – if he has also left any lineal descendants, one-third of his property shall belong to his widow, and the remaining two-thirds shall go to his lineal descendants, according to the rules herein after contained;*

*Sec. 37. Where intestate has left child or children only – Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children.*

As per Sec.33 of the Indian Succession Act, a Christian male died intestate one-third of the property shall belong to his widow and the remaining two-thirds shall go to his lineal descendants. Lineal descendants means, descendants born in lawful wedlock, and does not include descendants of a union which is not that of husband and wife, e.g. the offspring of a polygamous marriage which is void under the English law. ( Sophia Blin Vs Maria David 51 IC 542(544)).

06) As per Sec.33 of Indian Succession Act the 1st defendant is entitled to 1/3 share and the plaintiff and other defendants 2 to 6 are entitled to 1/9th share each. Regarding the share of the 9th defendant is concerned it will be discussed separately in Issue No:2. Therefore after Ex.B1 the joint status of the plaintiff and defendants 1 to 6 and 9th defendant came to an end after the execution of the partition deed dated:22.05.2000. In the above said partition deed the signature of the 9th defendant was admitted by her as Ex.A8. So, the joint status ceased away between the 9th defendant and his brother's legal heirs. The 9th defendant is only entitled to the share allotted in 'D' schedule in the above said partition. The remaining properties belong to her brother. So, the legal heirs of Durairaj @ Kulandaisamy is absolutely entitled to remaining properties. In the above said partition, the defendants 1, 2 and 6 alone parties to that document. But the plaintiff and other sisters are not party to that document. So, that document will not bind upon the plaintiff. As per that partition deed, the share of the 9th defendant alone was divided. The remaining properties are with the brothers and mother of the plaintiff. The defendants 1, 2 and 6 entered in to that partition in the year 2000 only as a trustee of the plaintiff and her sister. So, that partition deed will not bind upon the plaintiff. On the side of the 9th defendant the learned counsel would submit that when the partition deed of 2000 cannot be admitted regarding one share only but admitted for remaining shares. In the above aid partition, shares of two sharers were divided namely the 9th defendant and her brother Kulandaisamy. Since the Kulandaisamy is no more, his son and wife were party to that document. 1/2 share – share holder is the 9th defendant and she accepted the portion of the share alone and relinquished and accepted the remaining shares allotted to the heirs

of her brother. So, remaining shares allotted to the heirs of Kulandaisamy is accepted and is in existence. This partition came into effect from the compromise decree for partition. From this partition deed, this suit for partition came into play. So, the acceptance of share of 9th defendant through that partition deed will not affect the rights of the legal heirs of the Kulandaisamy. Hence, the subsequent partition namely this suit only with regard to shares remained in existence with the legal heirs of the Kulandaisamy on the date of partition, the 9th defendant severed from the jointness or from the co-ownership. Hence, the claim of the 9th defendant and arguments put forth by the learned counsel for the 9th defendant is not sustainable. So, in any angle the plaintiff is absolutely entitled to 1/9th share as prayed for. The Issue No.1 is answered accordingly.

**Issue No:2**

07) As per Sec.33 of Indian Succession Act male died intestate 1/3 goes to wife and remaining 2/3rd goes to children. On applying the above said provisions the 1/3 goes to the 1st defendant and the remaining 2/3 goes to the plaintiff and the defendants 2 to 6. The 9th defendant already got her property in the previous partition. With regard to previous partition, the 9th defendant as DW2 has stated as follows;

- “ 22.05.2000ல் குழந்தைசாமி மனைவி மரியமுத்து, குழந்தைசாமி குமாரர் ஜேகராஜ், ஜான் பீட்டர் மற்றும் நான் சேர்ந்து ஒரு பாகப்பத்திரம் தஞ்சாவூர் மாவட்ட பதிவாளர் அலுவலகத்தில் 3605/2004 என்று பதிவு செய்தோம் என்று எனக்கு ஞாபகம் இல்லை. மேற்படி நபர்கள் அன்றைய தேதியில் உயிருடன்தான் இருந்தோம். அதில் உள்ள கையொப்பம் என்னுடையதுதான். என்னிடம் காட்டப்படும் ஆவணத்தில் உள்ள கையொப்பம் மட்டும் வாசாஆ.8.”

The above said partition deed is a registered document in which Arockiamary W/o.Ubakarasamy was arrayed as 4th party. But she simply stated that ஞாபகம் இல்லை. It is not sufficient. The 9th defendant has also claimed partition of 1/2 share in the suit properties and she has also paid court fees due to her share. There was a partition deed among the original heirs and she relinquished her remaining portion of 1/2 share and accepted only 1 acre 66.2/3 cents. Now she cannot again sought for partition without questioning the above said document. Therefore mere payment of court fees and prayer for partition alone is not sufficient for the relief claimed by the 9th defendant. Hence this court comes to a conclusion that the 9th defendant is not entitled to any partition in the suit properties. The Issue No.2 is answered accordingly.

**Issue No:3**

08) The plaintiff sought for relief against the defendants 7 & 8 for permanent injunction. The 7th defendant is acting under the Registration Act. There is no prohibition in the act to restrain the 7th defendant from registering any document and the objections raised by any of the parties. If the documents presented before 7th defendant for registration and proper stamp duty paid and document is in accordance with law certainly the 7th defendant is bound to register the same. The only remedy upon to the parties to agitate their right before the competent Civil court and the 7th defendant is bound to obey the order of the civil court. In such circumstances, the 7th defendant cannot be restrained or prohibited from registering document. The 8th defendant is only a formal party and no relief can be sought against the 8th defendant. In such circumstances, the relief against the defendants 7 & 8 are not sustainable. So, the plaintiff is not entitled to any relief against the defendants 7 & 8. The Issue No.3 is answered accordingly.

**Issue No:4**

09) Since Issue No:1 it was decided that the plaintiff is entitled to partition of 1/9th share. Hence, the plaintiff is not entitled to any other relief. The Issue No.4 is answered accordingly.

10) In the result, the suit is decreed for preliminary decree. The plaintiff is entitled to 1/9th share in the suit properties. The 9th defendant is not entitled to any partition in the suit properties. The suit is dismissed against the defendants 7 & 8 with regard to the relief of injunction. Considering the circumstances of the case, there is no order as to costs.

Dictated to Steno typist, transcribed by her, corrected and pronounced by me in the open court, this the 22nd day of July 2015.

Sd/- N.Balasubramanian.

II Additional District & Sessions Judge,  
Thanjavur.

**Plaintiff's side Witness:**

PW1 Arokiamary W/o.James Joseph Baskar  
PW2 James Joseph Baskar S/o.Late.George.

**Plaintiff's side Exhibits:**

Ex.A1 18.12.1987 : Certified copy of death certificate of Durairaj @ Kulandaisamy.  
Ex.A2 04.07.2007 : Office copy of legal notice issued by the plaintiff to defendants.  
Ex.A3 05.07.2007 : Postal Acknowledgment card of 2nd defendant.

- Ex.A4 05.07.2007 : Postal Acknowledgment card of 7th defendant.  
Ex.A5 20.07.2007 : Unserved notice from 6th defendant.  
Ex.A6 15.08.2008 : Dhinamalar paper publication by the plaintiff.  
Ex.A7 05.06.1998 : Xerox copy of partition deed.  
Ex.A8 22.05.2000 : Signature of Arokiamary in certified copy of compromise decree.  
Ex.A9 07.06.2007 : Legal heir-ship certificate of Durairaj.  
Ex.A10 27.08.2014 : Encumbrance certificate.

**Defendants side Witness :**

- DW1 Jesuraj S/o.Durairaj @ Kulandaisamy.  
DW2 Muthumary @ Arokiamary W/o.Ubakarasamy.

**Defendants side Exhibits :**

- Ex.B1 11.02.1993 : True copy of Final decree in O.S.52/1990.

Sd/- N.Balasubramanian.  
II Additional District & Sessions Judge,  
Thanjavur.