

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

Present :Thiru.P. Nagarajan, M.A.M.L.,
II Additional District & Sessions Judge, Thanjavur.
Thursday the 2nd day of April 2026.
(Thiruvalluvar Andu 2057 -Panguni Matham 19th day)

ORIGINAL SUIT NO:147/2019

CNR No.TNTJ1008198 2019

1)J.Sagayarani
2) S.Maries MarittoPlaintiffs

/vs/

1) Esthar Mary
2) M.Wilson @ Aswath
3) M.Dinesh
4) Marlin Pushpa
5) Suganya
6) G.JayakumarDefendants

This suit was taken on file on 16.10.2019 on the file of the Principal District Court, Thanjavur and made over to this court on 17.10.2019. In this court this suit came up for final hearing before me on 24.02.2026 in the presence of Thiru.P.Lenin, Advocate for the Plaintiffs and of Thiru.Balaiyan, Advocate for the 1st defendant and of Thiru.S.A.L.Vivian Ashok, Advocate for the 2nd defendant and of Thiru.P.Raja, Advocate for the 3rd defendant and the defendants 4 to 6 remained exparte and upon hearing the arguments of both sides, upon perusal of the material records pertaining to the case and the matter having stood

over for consideration till this date, this court delivered the following.....

JUDGMENT

This suit filed by the plaintiffs to pass a preliminary decree in favour of the plaintiffs declaring the 2/5 share in the suit properties in favour of plaintiffs by division of the suit properties by metes and bounds and also to pass a final decree in terms of preliminary decree by appointing an advocate/commissioner and for costs of the suit.

2) The Gist of the plaint filed by the plaintiff:

The Plaintiffs and the defendants 1 to 3 are sisters and brother of their parents Mariyadoss and Flora. The 4th defendant is the wife of the 2nd defendant. The defendants 5 and 6 are tenants in the shops. Mother Flora has purchased a house site described below in the schedule of suit property through a registered sale deed dated 06.02.1982 for due consideration out of her own effort and money and constructed a house building and shop buildings in the suit property. The plaintiff's father Mariyadoss died on 12.02.2008 leaving behind his wife, the plaintiffs and the defendants 1 to 3 as his legal heirs. The defendants 2 to 4 are also residing in the property described below with the plaintiffs' mother Flora. After the death of the plaintiffs' mother Flora, the plaintiffs and the defendants 1 to 3 inherited her property described below in the schedule jointly and equally. Thus the plaintiffs and the defendants 1 to 3 are each entitled to 1/5 share in the suit properties.

2 (i) The 3rd defendant has been residing in the first floor of the suit property with his wife and children and he has leased out a 2nd shop to the 6th defendant and has been collecting the rent. In the same manner, the 2nd defendant has residing along with the 5th defendant in the ground floor of the suit property and leased out the 3rd and 4th shops to the 5th defendant and retained the 1st shop for his personal use and running a computer center by name Allwin computers. The 4th defendant running a dance class on the backside of the ground floor residential building in the name of Marlin Kalalaya Dance School. Often the plaintiffs are visiting and staying in the houses described below along with the defendants 2 and 3. Apart from the above the defendants 2 and 3 had been sharing the rent collected from the tenants with the plaintiffs. Hence the plaintiffs do not want to enjoy the suit properties jointly with the defendants 1 to 3. So, the plaintiffs issued a lawyer notice dated 04.09.2019 to the defendants. The defendants have received and acknowledged the above notice on 06.09.2019 and there is no reply. Hence the suit.

3) The Summary of the written statement filed by the 1st defendant as follows:

The suit is not maintainable in law or on facts and is liable to be dismissed in limine. Flora the mother of the plaintiffs and and defendants 1 and 3 never purchased the house site described below in the schedule of suit property through a registered sale deed 06.02.21982 for full consideration out of her own efforts

and money. Since the house site was purchased in the name of Flora mother, a loan was availed by the 2nd defendant in the name of his mother and subsequently all the loan amount has been paid and the loan discharged by the 2nd defendant only. Hence the theory which was introduced as if this defendant's mother have purchased the house site then constructed a house and shop building thereon is an engineered one for the purpose of this case and further it shows the fertile imagination of the plaintiffs and D3 in this case with an ulterior motive apart from grabbing the property and giving the perennial nuisance and inconvenience to all the family members. The plaintiffs have no cause of action against this defendant to file this suit. Hence the suit has to be dismissed with exemplary cost.

4) The Summary of the written statement filed by the 2nd defendant as follows:

The suit is not maintainable in law or on facts and is liable to be dismissed in limine. The allegations found in the plaint are equally false to say that the plaintiffs' mother have collected rent from the tenants. In fact this defendant has been collecting rent from the tenants after his arrival from Foreign country from 2006 onwards. The date of death of Mariadoss on 12.02.2008 is correct. It is also true that the defendants 2 to 4 are residing in the property with the plaintiffs' mother Flora. She died on 29.06.2012 leaving behind the defendants 1 to 3 and the plaintiffs as legal heirs. In pursuance of the death of Flora the plaintiffs and the defendants 1 to 3 as the legal heirs are entitled to 1/5th share in the suit

property. There is no quarrel above the respective shares. It is true that the 3rd defendant has been residing in the first floor of the suit property with his family with the permission and consent of this defendant. At the same time the 2nd defendant leased out the 2nd shop to the 6th defendant with the consent of this defendant's and further allowed the 3rd defendant to collect the rent from the 6th defendant and use the amount for 3rd defendant's personal and family use only. This defendant has living with his family in the ground floor of the suit property and also retain the first shop for his personal use and running a computer center in the name and style of Alwin Computer Center. The 4th defendant is running a dance class in the suit property is true. From the above narrations and material facts. It is clinchingly proved that this defendant alone is the owner of the house site building and shops and no one is the owner. This defendant has purchased this site in the name of his mother out of love and affection and allowed the 3rd defendant to collect the rents from the shop No.2 from the respective tenant and graciously permitted the 3rd defendant to make use of the collected rents for his personal and family expenses. The court fee paid is not in accordance with law. Hence this suit has to be dismissed with exemplary cost.

5) The Summary of the written statement filed by the 3rd defendant as follows:

The suit is not maintainable in law or on facts and is liable to be dismissed in liminie. This defendant is residing in the suit property with his mother Flora in

the ground floor. The defendants 2 to 4 also residing in the portion of suit property. This defendant's mother Flora died intestate on 29.06.2012 leaving behind the plaintiffs and the defendants 1 to 3 as her legal heirs. After the death of this defendant's mother Flora the plaintiffs and the defendants 1 to 3 inherited the suit property jointly and equally. Thus the plaintiffs and the defendants 1 to 3 are each entitled to 1/5th share in the suit properties. The defendants 2 and 4 are acting against the interest of this defendant and the plaintiffs and they are giving lot of trouble to this defendant. Aggrieved by the illegal and irresponsible activities of the defendants 2 to 4 this defendant is also not willing to enjoy the suit property jointly. But the 2nd defendant is not co operating for the division of the suit property by amicable partition. Hence the plaintiff filed the present suit, All the contra allegations against this defendant are not correct. This defendant is contesting the above suit property. This defendant has no objection for division of suit property. For which this defendant herewith paid the court fee of Rs.2,500/-

6) On perusal of both side pleadings and documents this court frames the following issues on 30.04.2022.

1)	Whether the plaintiffs are entitled to 2/5 share in the suit property?
2)	Whether the 3 rd defendant is entitled to 1/5 share in the suit property?
3)	Whether the plaintiff and 3 rd defendant are entitled to preliminary decree?
4)	What other reliefs the plaintiffs are entitled to?

7) In this suit, on the plaintiff's side the plaintiff Sagayarani was examined as PW.1 and Ex.A1 to Ex.12 documents were marked through him. On the side of the defendants, DW.1 to DW.4 were examined and Ex.B1 to Ex.B6 were marked through DW.1 and B18 were marked.

8) The counsel for the plaintiff submitted that the plaintiffs and the D1 to D3 are brothers and sisters and entitled for equal share in the suit properties which is purchased by mother of the above Flora who died in the year 2012 intestate stating that the property was purchased by mother. After demise of mother the rent from the shops are not established with the plaintiff, defendants 2 and 3 not repay to share the profits. Hence prayed for share in the suit property by providing notice and documents of the plaintiffs Ex.A1 to A12 being the sisters of D2 and D3 and daughter of deceased Flora entitled for equal share in the suit property as per section Indian Evidence Act 37. Hence praying for allowing the suit.

9) The learned counsel for 1st defendant submitted that even though the suit property stands in the name of Flora who is mother of plaintiff and D1 to D3 which has been purchased by the income of 2nd defendant and the building also constructed from the salary of 2nd defendant who worked at Sharjah. Hence prayed for dismissal of the suit.

10) The learned counsel for 2nd defendant submitted that in his written argument the suit property purchased out of the salary income of the 2nd defendant and the construction also made from the monthly salary income of

2nd defendant. Since the 2nd defendant worked at Sharjah he is not able to proceed himself on behalf of the 2nd defendant being mother purchase the loan in her name and constructed the building for his benefits only. The 2nd defendant only repaid the housing loan granted to the mother Flora to the District Co-operative Society of Karanthai and prayed for dismissal of the suit.

11) The learned counsel for 3rd defendant submitted that he is the last son of deceased Flora. The property was not purchased by 2nd defendany money or any others it was purchased by her mother Flora. Even before the 2nd defendant went to Sharjah the building was constructed by his mother by availing the houseing loan from the District Co operative society and hand loan from known person. Deceased mother not executed any testimonial document . Hence all the legal heirs are entitled for equal share in the property and prayed for allowing the suit and allowed his share.

12) Other defendants 4 to 6 were remained exparte.

13) Heard both side. Perused the documents and evidence.

14) On the side of the plaintiff Sagayarani the 1st plaintiff examined as herself deposed in the 2nd plaintiff also praying for share in the suit property being legal heirs of the deceased Flora and stated that the property was purchased by her mother the building was raised by her in the year of 1982 and later by availing the Co operative Housing Society Loan constructed the ground floor and 1st floor in different period. The 2nd defendant went to Sharjahh in the

year 1991 only prior to that the construction was completed prayed to allowing the suit.

15) On the side of 3rd defendant examined as DW.1. He stated in his evidence that the suit property was purchased by her mother on 06.02.1982. His father died in the year 2008 and his mother died on 29.06.2012 and prayed that himself and plaintiffs and 1 and 2 defendants are the legal heirs. Hence prayed for allowing the suit and allowed equal share to him.

16) On the side of the 3rd defendant Ex.B1 to B6 were marked. Regarding the loan and the police complaint raised by the 2nd and 3rd defendant and also equally divided the financial capacity of the 2nd defendant and his raising of construction. The 2nd defendant examined as DW.2. He stated that the suit property is not family property, since his father being police not having such a capacity to the purchase of site and construction of building. The entire site and construction was made by the income of the 2nd defendant alone. Hence the 2nd defendant alone was owner of the property. Prayed for dismissing the suit. In his cross examination he stated that the property purchased by her mother in the year 1982 between the period of Ex.B8 to Ex.B12 the building was not constructed, the plot was not purchased prior to that purchase of plot and construction completed. The 1st defendant examined as DW.3. She deposed in her statement property purchased by her mother for the benefit of 2nd defendant out of the salary income of the 2nd defendant. The construction by utilizing the society loan which was repaid by the 2nd defendant. Hence no other legal heirs

are not entitled the share in the suit property. Hence prayed for dismissing the suit.

17) One Adharsh was examined as DW.4. He stated that from 1992-1994 manage the account was follows which was not now available.

18) From the evidence of both side and documens it is clear that the Ex.B1 sale deed No.269/1982 stands in the name of Flora who is wife of Maria doss. The purchse was made in the year 1982. Hence the purchase of the property by Flora is not as stated by the 2nd defendant which was purchased in the year 1982. Now in the year 1982 the 2nd defendant was minor who is not any capacity and residing along with their parents for the 2nd property. From the document Ex.A1 itself denied in the averments of 2nd defendant is not acceptable one. For the purpose of construction there is no document filed by both side and the other document filed to subject about the construction was only for availing the loan. Subsequently on the cross examination of the 2nd defendant accepted the loan was availed by her mother for the purpose of purchasing xerox machinefor the business benefit of third defendant Dinesh. The 3rd defendant was examined as DW.1.

19) It is clearly shows that the loan was not availed for the construction of the suit property but it was borrowed only for the purpose of purchasing Xerox Machine for the business benefit of 3rd defendant Dinesh. The 3rd defedant Dinesh was DW.1. The document filed by the 2nd defendant stating that

the amount of Rs.20,000, Rs.10,000/- and Rs.2,500/- alone sent by the 2nd defendant whose family is stating along with their portion which was not categorically questioned and not accepted by both side.

20) The claim made by the 2nd defendant that the suit property purchased for his benefit and construction was made for his benefit is not acceptable since eventhough being minor. Even the purchase by his benefit which is to be registered in his construction or the other electrical connection and property documents to be registered permission be granted in the name of the 2nd defendant. There is no such document filed either by the 2nd defendant or by any other parties. But the document filed by parties clearly reveals that the property was purchased in the year 1982. As per the Ex.A1 to A7 construction was made in between the year by availing hand loan and society loan. The 2nd defendant went to society in the year only 1992. The contention of the 2nd defendant is irrespective to the construction and purchase of property. Hence the owner ship of 2nd defendant claim is in admissible law and on facts. Therefore the plaintiff and 3rd defendant entitled each 1/3 share in the sut property. Hence the Issue No.1 and 2 are answered accordingly.

21) **Issue No.3:** From the above discussion it was clearly discussed and share of plaintiffs and 3rd defendant was found finality. Hence the plaintiff and 3rd defendant is entitled the relief of preliminary decree.

22) **Issue No.4:** From answer of Issue No.1 to 3 there was answered the facts relating to the suit properly discussed and relief was claimed and granted by

this court. Hence there is no other relief available for the plaintiff. Being the family members filed the suit for partition eventhough having difference of opinion.

In final, the suit is decreed as prayed for without cost.

This judgment is dictated by me to steno-typist, transcribed in computer by her, corrected and pronounced by me in open court this the **2nd day of April 2026.**

**II Additional District and Sessions Judge,
Thanjavur.**

Plaintiffs side witnesses:

PW.1	Sagayarani (1 st plaintiff)
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Plaintiffs' side Exhibits

Ex.A1	06.02.1982	Copy of sale deed in favour of Flora
Ex.A2	03.03.2008	Death Certificate of Mariadoss
Ex.A3	26.07.2012	Death Certificate of Flora
Ex.A4	30.09.2019	Receipt of Electricity connection
Ex.A5	04.09.2019	Office copy of legal notice issued by plaintiffs
Ex.A6	----	Postal acknowledgment
Ex.A7	----	Postal acknowledgment
Ex.A8	----	Postal acknowledgment
Ex.A9	----	Postal acknowledgment
Ex.A10	----	Postal acknowledgment

Ex.A11	----	Postal acknowledgment
Ex.A12	---	Guide line value issued by Registration Department

Defendant side witnesses:

DW.1	Dinesh (3 rd defenddant)
DW.2	Wilson (2 nd defendant)
DW.3	Esthar mary (1 st defendant)
DW.4	Aadharsh (Deputy Manager)

Defendants' side Exhibits

Ex.B1	16.04.2021	Explanation from Right from Information Act from Rajarasan Co operative Housing loan society, Thanjavur.
Ex.B2	21.09.2019	Reply of Ex.B1 from Inspector of Police, Thanjavur South PS.
Ex.B3	12.12.2019	Reply of Ex.B1 from Inspector of Police, Thanjavur South PS.
Ex.B4	19.03.2021	Reply of Ex.B1 from Deputy Superintendent of Police, Thanjavur Town.
Ex.B5	19.04.2021	Reply of Ex.B1 from Head quarter Additional Superintendent of Police, Thanjavur Town.
Ex.B6	25.07.2023	Encumbrance Certificate in survey details of 450/2D, 34/2
Ex.B7	08.08.2022	Copy of receipt from Special Officer, Co operative Housing loan Society, Thanjavur to Flora and Mariadoss

Ex.B8	----	Loan application by M. Flora
Ex.B9	10.10.2022	Online copy of mortgage lease deed in the name of Flora
Ex.B10	06.01.2024	Copy of receipt of Mortgage loan
Ex.B11	07.08.1991	Copy of pay certificate of Mariadoss
Ex.B12	---	Copy of passport of Mariadoss
Ex.B13	05.02.1993	House warming ceremony of Flora Mariadoss
Ex.B14	30.08.1990	Emirates India International Exchange company, Sharjahh U.A.E. amount Rs.2,500/-
Ex.B15	12.04.1992	Emirates India International Exchange company, Sharjahh U.A.E. Rs.20,000/-
Ex.B16	04.07.1992	Emirates India International Exchange company, Sharjahh U.A.E. Rs.10,000/-
Ex.B17	06.04.1997	Appointment order issued by Sharjahh Ports authority to Mariyadoss Wilson
Ex.B18	26.12.2006	Concern letter to Mariadoss issued by Chairman United Arab Emirates.

**II Additional District and Sessions Judge,
Thanjavur.**

Judgment in

OS.No.147/2019

Dated: 02.04.2026