

IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUNELVELI

PRESENT: **THIRU.A.NAZIR SHAMED, MA., L.L.M.,**

Principal District Judge , Tirunelveli.

Friday the 13th day of August 2021.

Original Suit No.138/2018

(CNR.No.TNTL 0100 9881 2018)

M.V.Senthil Muthukumar

... Plaintiff

Vs.

Uma Devi

... Defendant

This suit came up before this Court on 26.07.2021 for final hearing, in the presence of Thiru.K.Sankararaman, Advocate for Plaintiff and of Thiru.A.Balasubramanian, Advocate for Defendant and upon hearing the arguments of both side and on perusing evidence and exhibits of both side and having stood over for consideration till this day this court delivered the following:

JUDGMENT

Suit for partition of plaintiff's 4/5th share in the plaint schedule property by metes and bounds and separate possession and Post mesne profit and future mesne profit.

2. **The brief averments in the plaint are as follows;**

The Plaintiff schedule house and vacant site were originally belonged to one Velayutham, father of plaintiff and defendant through sale deed

dated 06.10.1982 and rectification deed dated 28.03.1988. The said Velayutham died intestate on 31.12.2014 left behind his wife Thangam ammal, plaintiff, defendant and another son Sivakumar and daughter Malathi as his legal heirs. After that the schedule property was in joint possession. Except the defendant, others relinquished their undivided 3/5 share in the plaint schedule property to the plaintiff through a release deed dated 04.07.2018. Therefore, the plaintiff have exclusive right of 4/5 share in the plaint schedule property and he is in joint possession with defendant. The defendant resides in the first floor of the plaint schedule house with the permission of other heirs. Plaintiff felt that defendant's 1/5 share is not comfortable to enjoy it. Therefore he approached the defendant to relinquish her share to him and to receive the value of the share. But the defendant refused it. Inorder to vacate the plaintiff from the property, the defendant gave false complaint in police station against the plaintiff's brother Sivakumar and many problems arose between them. In this juncture, plaintiff asked the defendant to receive her share amount and to vacate the plaint schedule house. The defendant refused and she is disturbing the plaintiff in repairing and maintaining the house. So, the plaintiff sent a legal notice on 17.08.2018 asking her to divide his 4/5 share in the plaint schedule property and demanded post mesne profit and future mesne profit. The defendant received the said notice on 20.08.2018 and sent a reply notice on 31.08.2018 with false allegations. The defendant is

residing in the upstairs portion with the permission of plaintiff and other heirs after the death of father. It is false to state that upstairs portion was handed over to the defendant by the father and the father constructed a house with upstairs on the eastern side plot and defendant also gave Rs.1,00,000/- by pledging her jewells in Canara Bank. Velayutham did not construct the building by pledging the jewells of defendant. The defendant with the help of her husband created false criminal complaint to disturb the plaintiff and his brother. Hence, the plaintiff filed this suit for partition of the schedule property and to demand past and future mesne profit.

3. The brief averments in the written statement filed by the defendant are as follows:

The suit is not maintainable either in law or on facts. The defendant denied the averments stated by the plaintiff that the plaint schedule property house and site were belonged to Velayutham, who is the father of plaintiff and defendant through sale deed dated 06.10.1982 and rectification deed dated 28.03.1988. In fact, defendant's father Velayutham had purchased only vacant site through the said sale deed. Thereafter he had constructed a house in the vacant site to an extent of 22 feet on south-north and 11.7 feet on east-west. Further, he was admitted in the hospital on 31.12.2014 while on a pilgrimage to the Sabarimala Iyappan Temple and died at Believers Church Medical Centre, Pathanamthitta. At that time defendant's husband went to Kerala at his own expense to retrieve the body

of Velayudham by spending Rs.1,00,000/-. Thereafter, defendant is maintaining her mother. The defendant's father Velayutham worked as a Line Man in BSNL office and died during his tenure. Since the plaintiff and other heirs are residing at Chennai, the defendant and her husband took steps to get benefit to her mother. After getting the benefit the plaintiff and another brother cheated their mother and got the entire amount and no share is given to the defendant. The plaintiff did not include the said cash benefits in the suit schedule. Further, the said Velayutham had purchased the properties 6 Cents in Survey No.1698/48 with house at Door No.5/4 situated in Mathew street, Annai Indira Nagar, Palayamkottai in the name of his wife Thangammal and constructed three houses. The plaintiff and his brother Sivakumar and sister Malathi got a gift on 23.05.2018 by threatening their mother in respect of the said houses without the knowledge of the defendant. The above deed will not bind the defendant in any way. The plaintiff did not include the monetary benefit of his father and houses belong to mother Thangammal. Hence, the suit is bad for partial partition, Further, during the lifetime of said Velayutham, defendant had married on 27.11.2009. At the time of her marriage, said Velayutham handed over the possession and enjoyment of the plaintiff schedule upstairs portion to the defendant. Since the plaintiff, brother Sivakumar and sister Malathi were living in Chennai with their family with their consent, the defendant's father modified the ground floor of the schedule house and

defendant modified the upstairs of the same. Defendant used her husband's income and the amount realised from pledging and selling her jewels to renovate the upstairs portion. Therefore, the upstairs of the schedule house is the property of defendant. This suit is filed by the plaintiff at the instigation of brother Sivakumar, with the intention of harassing the defendant as his father had died before the entire renovation of the stairs could be completed. Further, the plaintiffs' brother Sivakumar, who was living in the ground floor of the plaint schedule house was incited by the plaintiff to interfere with the defendant's possession and threatened to kill her. Therefore, on 26.06.2018, defendant lodged a police complaint against Sivakumar. Though the police warned him, the said Sivakumar has continued to interfere with the defendant's enjoyment. The plaintiff is entitled to undivided 1/5 share only in the plaint schedule ground floor. Neither the plaintiff nor the other heirs have any share in the upstairs of the plaint schedule house. Defendant is entitled to undivided 1/5 of the ground floor of the plaint schedule house and vacant site. Defendant's mother Thangam Ammal, brother Sivakumar and sister Malathi, were not impleaded as parties in this suit. Therefore the suit is bad for non joinder of necessary parties. Since the defendant owns the upstairs of the plaint schedule house, the plaintiff is not entitled to claim past and future mesne profit. There is no cause of action to this suit. Hence, the suit is liable to be dismissed.

4. After perusing the plaint, written statement and documents, this court framed the following issues for consideration on 10.07.2019 ;

1. Whether the suit is bad for partial partition?
2. Whether the plaintiff has share in the entire suit property?
3. Whether other legal heirs of deceased Thiru.M. Velayutham except the defendant herein relinquished their right in the suit property in favour of the plaintiff herein ?
4. Whether the plaintiff gave oral permission to the defendant to enjoy the upstairs portion?
5. Whether the father of defendant orally gave the upstairs portion of the old house to the defendant at the time of her marriage?
6. Whether the defendant put up constructions in the upstairs portion with her own funds?
7. Whether the plaintiff is entitled to share in the suit property as prayed for?
8. Whether the plaintiff is entitled to receive post mesne profit Rs.1,08,000/- at the rate of Rs.3000/- per month from the defendant?
9. Whether the plaintiff is entitled to receive future mesne profit from the defendant at the rate of Rs.3000/- per month?

10. Whether the plaintiff is entitled to the reliefs as prayed for in the plaint?

11. To what other relief the plaintiff is entitled to?

5. Thereafter, this court framed the following additional issue for consideration on 24.07.2021 ;

1. Whether the suit is bad for non-joinder of necessary parties?

6. In this case on the side of the Plaintiff, P.W.1 and P.W.2 are examined and Ex.A.1 to Ex.A.5 are marked. On the side of defendant, D.W.1 to D.W.3 are examined and Ex.B.1 to Ex.B.25 are marked.

7. Issues No.1 and additional issue No.1 :-

Plaintiff and defendant are brother and sister. It is admitted that the suit property belonged to one Velayutham who was working as a Line man in BSNL. He expired on 31.12.2014 while he was in service. His wife is Thangam ammam. Apart from plaintiff and defendant they have another son Sivakumar and one daughter Malathi. It is further admitted that the defendant is residing at the upstairs portion of the suit property.

8. The case of the plaintiff is that his mother, brother, and another sister Malathi relinquished their 3/5 share in the suit property in his favour and thereby he got totally 4/5 share in the suit property and defendant has 1/5 share in the suit property. Further according to the plaintiff the defendant was permitted to reside in the upstairs portion after the death of their father, the defendant has only 1/5 share in the property and it cannot be divided

and he asked the defendant to relinquish her share also after getting market value of the property. But she refused to do so. Therefore he is constrained to file this suit.

9. The case of the defendant is that even during the life time of her father she is residing in the upstairs portion, as the father orally gave the said portion to her. He also instructed the other heirs not to disturb her possession and he permitted the defendant to carry on repairs and maintain the upstairs portion, she also pledged her jewels and gave Rs.1,00,000/- to the father to put up a new construction in the remaining eastern side plot in the suit property. Nobody has right to disturb her possession in the upstairs portion. She had 1/5 share in the ground portion. The alleged relinquishment deed executed by mother and another brother and sister is not a valid document. Mother, brother and sister are not impleaded in the suit and the suit is bad for non-joinder of necessary parties. Further her father purchased the house property at Annai Indira Nagar in the name of his wife Thangam ammal and put up three houses in the said property. The said property is also not included in the suit. Further after the death of father the defendant's husband with his great effort got death benefit from the department to mother Thangam ammal and the said amount was not included in the suit. So the suit is bad for partial partition and on this ground also the suit is liable to be dismissed.

10. The plaintiff in his plaint stated that father purchased the suit property. The suit property consists of house with upstairs portion. The defendant contended that father purchased vacant site there after he put up construction. Ex.A1 is the original sale deed of the property. On perusal of the same, the said Velayutham purchased vacant site alone. Since there is correction in the document, an amended document also registered and the same is also marked as Ex.A2. So it is seen that the said Velayutham purchased vacant site and put up a house. Ex.A3 is the death certificate of the said Velayutham. It is stated by the defendant that the said Velayutham expired in Kerala while he went to Sabarimala for pilgrimage. He died on 31.12.2014. Ex.A4 is the legal heir certificate of the said Velayutham. It shows that his wife Thangam ammal, their children Sivakumar, defendant, plaintiff and Malathi are his legal heirs. Ex.A5 is the original release deed executed by mother Thangam ammal, brother Sivakumar and sister Malathi relinquished their share in the suit property in favour of plaintiff.

11. Further the plaintiff alleged that his mother Thangam ammal executed a settlement deed with regard to the property in Annai Indira Nagar in favour of plaintiff herein. Both the documents are disputed by the defendant as they are not valid documents and those properties are to be included in the suit. Further the defendant alleged that after the death of Velayutham the death benefits are received from BSNL and the said

amount has not been included in this suit for partition. Other heirs of Velayutham i.e, mother Thangam ammal, brother Sivakumar and their sister Malathi are to be added and the suit is bad for non-joinder of necessary parties.

12. It is seen from pleadings and evidence, the transfer made by other sharers in favour of plaintiff through registered deed. Mother also executed registered settlement deed with regard to the property stands in her name. Though the plaintiff admitted the receipt of the death benefit from BSNL department, he denied the allegation of the defendant that the death benefits were received by the effort of defendant and her husband. However the defendant produced Ex.B23 letter. It shows that the death benefit of Velayutham, Rs.11,50,636/- was received from BSNL department. Though the plaintiff stated that the said amount was spent for repayment of loan borrowed by Velayutham from LIC and others. But there is no proof for what was the amount received as loan from LIC and others and what was the amount paid to LIC etc. There is no proof that the entire amount was spent to discharge the loan borrowed by Velayutham. So the death benefits are not included in the suit and therefore the said amount has to be included and other shares i.e Thangam ammal, brother Sivakumar and sister Malathi are to be included as parties in the suit. So the suit is affected by partial partition and non joinder of necessary parties.

13. The learned counsel for the plaintiff produced citation reported in the case of **Kuppammal and another ..vs.. Palaniswamy and othes in O.S.A.No.59 & 158 of 2012 before the Hon'ble Madurai Bench of Madras High Court** and argued that suit cannot be dismissed for non-joinder of necessary parties and plaintiff has to be given a chance to implead the necessary parties. As per the citation if necessary parties are not impleaded in the partition suit, the suit cannot be dismissed and the plaintiff ought to have been given a chance to implead them. The said citation is applicable to this case. Considering the said judgment it is decided to give a chance to the plaintiff to implead the said other lehal heirs of the said Velayutham and to decide the suit thereafter. These issues are answered accordingly.

14. In view of the answers arrived in the above issues, necessary parties have to be impleaded and other issues can be decided thereafter on merits.

In the result, suit is reopened and plaintiff is given a chance to implead the other legal heirs of deceased Velayutham and decide the suit thereafter on merits. Call on 07.09.2021.

Dictated to the Steno typist taken down by her in Shorthand, transcribed and typed by her in Computer corrected and pronounced by me in Open Court, this the 13th day of August 2021.

(sd) A. NAZIR AHAMED
PRINCIPAL DISTRICT JUDGE,
TIRUNELVELI.

Principal District Court,
Tirunelveli.

O.S.No.138/2018

Dated: 13.08.2021

Draft / Fair Judgment.