

IN THE COURT OF THE DISTRICT MUNSIF, PONNERI.

PRESENT: TMT. V. VANNAMALAR, M.L., PGDIPR., PGD in CrI. & Fr.Sc.,
District Munsif, Ponneri.

Monday, the 17th day of July 2023.

ORIGINAL SUIT NO.30 OF 2012

1. Rajendiran
2. Malliga
3. Chandra
4. Shanthi

.....Plaintiffs

Vs.

1. Papathiyammal (Died) (Amended as per order in I.A.519/2018 dated 16.11.2018)
2. Munuswamy
3. Chellaiha

.....Defendants

This suit came up before me for final hearing on 17.07.2023 in the presence of Mr.R.Sridar, learned counsel for the Plaintiffs. Even after service of summons, the defendants 1 and 2 failed to appear before this court and hence were set exparte. The 3rd defendant has filed his written statement but failed to appear for trial and hence was set exparte. Upon hearing the arguments made by the learned counsel for the plaintiffs and on perusal of the entire case records and having stood over for consideration before this court till this day, this Court delivers the following:

JUDGMENT

1. This suit is filed by the plaintiff for declaration that the sale deed dated 31.03.1993 registered as Document No. 813 of 1993 on the file of the office of the Sub-Registrar, Ponneri, executed by the second defendant to and in favour of the third defendant, in respect of the suit property is fraudulent, void abinitio, illegal, null and void and not binding on the plaintiff and to pass a preliminary decree for partition of the suit property by metes and bounds and for allotment of the 1/6th share each to the plaintiffs 1 to 4 in the suit property and for separate possession of the same and

for a relief of permanent injunction restraining the third defendant from making any encumbrance in the suit property and for costs of the suit.

2. Brief averments of the plaintiffs as stated in the amended plaint are as follows:

2.1 The plaintiffs submit that they are the son and daughters of one late Krishnan and the first defendant is the wife of the said Krishnan and mother of the plaintiffs. The second defendant is the another son of the said Krishnan and brother of the plaintiffs and the third defendant is the purchaser of the suit property. The suit property originally was a separate property of the late Krishnan. He was in absolute possession and enjoyment of the same until his death. The said Krishnan died in the year 1971 intestate, leaving behind the plaintiffs and the first and second defendants as his only legal heirs to succeed the suit properties. Thereby each plaintiff is entitled to undivided 1/6th share in the suit property.

2.2 The plaintiffs submit that they have been repeatedly demanding the first and second defendants to concur with them for an amicable partition and allotment of their due share in the suit property. The first and second defendants have been evading to do so. The plaintiffs and the first and second defendants were in joint possession of the suit property. The plaintiffs submit that on 08.10.2010 when the first plaintiff has applied for encumbrance certificate before the SRO, ponneri, the plaintiffs came to know the fact that the suit property was alienated in favour of the third defendant herein by the second defendant fraudulently without the knowledge and consent of the plaintiffs under a sale deed registered as document No.813/1993 dated 31.03.1993 on the file of SRO, Ponneri. Third defendant also purchased the suit property without verifying the revenue records which clearly shows that the suit property was in the name of late Krishnan, who is the father of the plaintiffs.

2.3 The Plaintiffs further submit they have then sent a legal notice dated 17.02.2011 to the defendants calling them for cancellation of the said sale deed dated 31.03.1993 and also calling the first and the second defendants for amicable partition. The first and the second defendants neither sent any reply nor complied with the requirements of the notice. But the third defendant had sent an untenable reply. Hence this suit.

3. The averments set out in the written statement filed by the 3rd defendant are as follows:

The 3rd defenant submits that after due enquiry of the ownership of the 2nd defendant over the suit property which was duly affirmed and confirmed by the 1st defendant who had also attested the said sale deed dated 31.03.1993, the 3rd defendant had purchased the suit property from the 2nd defendant and registered the said Sale Deed. The 3rd defendant had purchased the suit property from the 2nd defendant for valuable consideration and ever since then the 3rd defendant has been in open, continuous, uninterrupted possession and enjoyment of the suit property. Stating that the plaintiffs and the 1st defendant had orally released their respective rights in the suit property in favour of the 2nd defendant as early as in 1985 and producing patta No.279 of the year 1987 in the name of the 2nd defendant in relation to the suit property and claiming exclusive ownership to the suit property, the 2nd defendant sold the suit property to the 3rd defendant after receiving the entire sale consideration detailed under the sale deed. The said Sale Deed was also attested by the 1st defendant with full knowledge of its contents. Immediately after the purchase of the suit property, the 3rd defendant has put up a residential structure in the suit property and obtained electric supply in his name and is in exclusive possession and enjoyment of the same by paying tax and electricity charges. The defendant also submits that he had also exercised his ownership over the suit property by mortgaging the same with Repco Bank, T.Nagar, Chennai. The sale deed dated 31.03.1993 in favour of the 3rd defenant with respect to the suit property is valid and genuine and the 3rd defenant has every right over the suit

property. The 3rd defendant has also prescribed title by adverse possession and also any alleged right of the plaintiffs over the suit property has become barred by limitation. Colluding with defenants 1 and 2, the plaintiffs have filed this vexatious suit knowing fully well that this defenant has valid title over the suit property. Hence the suit is liable to be dismissed with costs.

4. The averments set out in the Additional written statement filed by the 3rd defendant are as follows:

4.1 The 3rd defendant submits that the suit property was one of the ancestral joint family properties of Mottai Naicker alias Mottaigan Naicker, the father of deceased Krishnan, who was the father of plaintiffs and the 2nd defendant and husband of the 1st defendant. The suit property was included in patta No.222 in the name of the above said Mottai Naicker alias Mottaigan Naicker. After the death of Mottai Naicker alias Mottaigan Naicker, the suit property became the ancestral joint family property of the 1st Plaintiff, 2nd defendant and their father Krishnan. On the death of Krishnan in the year 1971 intestate, as per the provisions of the Hindu Succession Act, 1/3rd share each of the 1st plaintiff and 2nd defendant remained unaffected and the deceased Krishnan's 1/3rd share in the suit property alone is open to succession, which 1/3rd share had to be succeeded equally by Krishnan's widow, the 1st defendant and Krishnan's children namely the plaintiffs and the 2nd defendant by which they became entitled each to 1/18th share as the heirs of deceased Krishnan. The plaintiffs 2 to 4 and the 1st defenant who are the daughters and the wife of deceased Krishnan would have been entitled only to 1/18th shares each. But along with their 1/3rd share each in their own right, the 1st plaintiff and 2nd defendant adding 1/18th share each as heirs of their father, the 2nd defenant would have been entitled to 7/18th share made up of 6/18th share in his own right as one of the coparceners plus 1/18th share as one of the heirs of his father Krishnan in the suit property and the 1st plaintiff similarly would have been entitled to 7/18th share. Thus the quantum of share of 1/6th each claimed by the plaintiffs in the plaint is unsustainable.

4.2. The 1st defendant affirming and confirming the exclusive title of the 2nd defendant in the suit property has attested the sale deed dated 31.03.1993 executed by the 2nd defendant in favour of the 3rd defendant. Hence the 1st defendant is debarred and estopped from claiming any right over the suit property.

4.3. Apart from the suit property, Krishnan and his sons, the 1st plaintiff and the 2nd defendant owned extensive house site with houses in Perumal Kovil Street, Thachoor as another of their ancestral joint family property, wherein the plaintiffs and defendants 1 and 2 were living and after the marriages of the plaintiffs 2 to 4, the 1st plaintiff and defendants 1 and 2 are continuing to live therein. Hence this suit is bad for partial partition due to the non-inclusion of the above detailed house site with pucca brick built house. If such most valuable house site with house in Perumal Kovil street are to be included in this suit, it would in any event facilitate the 3rd defendant to seek for equity of allotting the entirety of suit property to the share of his vendor, the 2nd defendant, to be taken in entirety by the 3rd defendant.

4.4. The 3rd defendant submits that he has also obtained domestic water connection from the Panchetti Panchayath Board and is paying necessary charges therefor for the house in the suit property which was constructed by him immediately after his purchase.

4.5. Further, the 3rd defendant submits that as exclusive owner in possession of the suit property, he has borrowed Rs.40,000/- from one Nethaji, by mortgaging the suit property under a mortgage deed dated 11.10.1999 registered as Document No.127/1999 at SRO, Ponneri, which was subsequently mortgaged by the 3rd defendant with Repatriates Co-operative Finance and Development Bank Ltd (Repco Bank) by way of Deposit of title deeds for a loan. The said mortgage deed was registered as Doc.No.51/2010 at SRO, Ponneri and the said mortgage is still subsisting. Even in the reply notice dated 14.03.2011 sent by the 3rd defendant to the

plaintiffs, the defendant had denied the right of share of the plaintiffs in the suit property and has categorically asserted his exclusive possession and enjoyment of the suit property in effect denying the plaintiffs' alleged joint possession of the suit property. The claim of "deemed joint possession" of the suit property asserted by the plaintiffs is totally false and imaginary and deliberately invented and concocted to bring the suit under Section 37(2) of Court fees and suit valuation Act for the purpose of paying lesser court fees. The plaintiffs are not in joint possession and their right of share had already been denied in the reply notice dated 14.03.2011 by the 3rd defendant. The plaintiffs should have valued the suit under Section 37(1) of Court Fees Act. If so correctly valued under Section 37(1) of Court Fees Act, the plaintiffs will have to pay large amount of court fees on the basis of actual market value of the suit property which is a road abutting house site. Hence the suit is liable to be dismissed with costs.

5. Even after service of summons, the defendants 1 and 2 failed to appear before this court and hence were set exparte. The 3rd defendant has filed his written statement but failed to appear for trial and hence he was set exparte.

6. On consideration of the pleadings the following issues and additional issues were formulated by this court for proper and complete adjudication:-

- 1) Whether the suit is barred by Limitation?
- 2) Whether the plaintiffs are entitled to get declaration as prayed for?
- 3) Whether the plaintiffs are entitled to get 1/6th share each in the suit property?
- 4) Whether the plaintiffs are entitled to get Preliminary decree as prayed for?
- 5) Whether the plaintiffs are entitled to get permanent injunction as prayed for?
- 6) To what other relief?

Additional Issues:

1) Whether the suit has been properly valued and court fees has been paid correctly by the plaintiffs?

2) Whether the plaintiffs are in joint possession and enjoyment of the suit property?

7. On the side of the Plaintiffs, the 1st Plaintiff was examined as PW1 and Exhibits A1 to A6 were marked through him. Since the defendants were set exparte, no oral or documentary evidence was submitted on their side.

8. Issue Nos. 1 to 4 and Additional Issue Nos. 1 and 2:

8.1 The case of the plaintiffs is that the plaintiffs are the son and daughters of one late Krishnan and the first defendant is the wife of the said Krishnan and mother of the plaintiffs. The second defendant is the another son of the said Krishnan and brother of the plaintiffs and the third defendant is the purchaser of the suit property. The suit property originally was a separate property of the late Krishnan. The said Krishnan died in the year 1971 intestate, leaving behind the plaintiffs and the first and second defendants as his only legal heirs to succeed the suit properties. Thereby each plaintiff is entitled to undivided 1/6th share in the suit property. The plaintiffs and the first and second defendants were in joint possession of the suit property. The plaintiffs have been repeatedly demanding the first and second defendants to concur with them for an amicable partition and allotment of their due share in the suit property. The first and second defendants have been evading to do so. On 08.10.2010 the plaintiffs came to know the fact that the suit property was alienated in favour of the third defendant by the second defendant without the knowledge and consent of the plaintiffs under a sale deed registered as document No.813/1993 dated 31.03.1993 on the file of SRO, Ponneri on which date the first plaintiff has applied for encumbrance certificate with the SRO, Ponneri. The plaintiffs have then sent a legal notice dated 17.02.2011 to the defendants calling them for cancellation of the said

sale deed dated 31.03.1993 and also calling the first and the second defendants for amicable partition. The first and the second defendants neither sent any reply nor complied with the requirements of the notice. But the third defendant had sent an untenable reply.

8.2 To support the case of the plaintiffs, the 1st plaintiff was examined as PW1, where he has reiterated the same facts and contentions as stated in his plaint and through him Exhibits A1 to A6 were marked on the side of the plaintiffs. Exhibit A1 is the Chitta for the Suit Property and the same stands in the name of deceased Krishnan. Exhibit A6 is the Adangal for the suit property and the same stands in the name of the deceased Krishnan. Exhibit A2 is a Certified copy of the Sale Deed dated 31.03.1993 registered as Document No. 813 of 1993 at the office of the Sub-Registrar, Ponneri, executed by 2nd Defendant thereby conveying the suit property to and in favour of the 3rd Defendant. Exhibit A3 is an Encumbrance Certificate for the suit property dated 18.01.2011 for the period from 04.11.2009 to 17.01.2011 and the same discloses entries relating to the mortgages of the suit property made by the 3rd defendant. Exhibit A4 is a legal notice dated 17.02.2011 issued by the plaintiffs to the defendants calling the first and the second defendants for amicable partition. Exhibit A5 is a reply notice dated 14.03.2011 issued by the 3rd defendant to the plaintiffs.

8.3 On the other hand, even after service of summons, the defendants 1 and 2 failed to appear before this court and hence were set exparte. The 3rd defendant though submitted his written statement, he had failed to appear before this court for trial and to substantiate his contentions by submitting evidence before this court and hence he was set exparte.

8.4 On careful analysis of the above, it is seen that there is no dispute with regard to the relationship between the parties. The plaintiffs contend that the suit property is a separate property of the late Krishnan and submits Exhibit A1, Chitta and Exhibit A6,

Adangal for the suit property and the same stands in the name of the deceased Krishnan. Though the 3rd defendant submits that the suit property was one of the ancestral joint family properties of plaintiffs and the 1st and the 2nd defendant, no oral or documentary evidence to substantiate the said plea was submitted by the 3rd defendant.

8.5 This court views that though the 3rd defendant has stated in his written statement that he is in continuous, uninterrupted possession and enjoyment of the suit property after his purchase of the suit property, he has not submitted any documents to evidence the same. Further the 3rd defendant's claim that the plaintiffs and the 1st defendant had orally released their respective rights in the suit property in favour of the 2nd defendant as early as in 1985 and a Patta No.279 of the year 1987 in the name of the 2nd defendant in relation to the suit property was obtained by the 2nd defendant. But no such Patta was produced before this court. Also, oral relinquishment of rights with respect to immovable property having the value of more than one hundred rupees is not valid in the eye of law as the same is required to be reduced into writing and must be properly stamped and registered. Hence the said plea of the 3rd defendant fails on the legal ground.

8.6 Also the 3rd defendant's contention that the deceased Krishnan and his sons, the 1st plaintiff and the 2nd defendant owned extensive house site with houses in Perumal Kovil Street, Thachoor as one of their ancestral joint family property and hence this suit is bad for partial partition due to the non-inclusion of the above detailed house site with brick built house in the present suit for partition is not tenable in the absence of production of any document to show that there was other joint property that belonged to the plaintiffs and the 1st and the 2nd defendants. On the other hand the PW1 in his oral evidence has accepted the fact that he along with the 2nd defendant are residing in their ancestral property. But has deposed that the said property has already been partitioned among themselves and hence not included in this suit. Hence

the said plea of the 3rd defendant that the suit is bad for partial partition is not sustainable.

8.7 The plaintiffs contend that they along with the first and second defendants were in joint possession of the suit property. The 3rd defendant had denied the right of share of the plaintiffs in the suit property and has asserted his exclusive possession and enjoyment of the suit property and also denied the plaintiffs' alleged joint possession of the suit property stating that the plaintiffs have stated so only to pay lesser court fees. The PW1, on the other hand, in his oral evidence has deposed that the plaintiffs were told by the 2nd defendant that the 2nd defendant being the elder brother had permitted the 3rd defendant to reside in the vacant suit property by building a house and by getting electricity and water connection in the said property and that the plaintiffs were under the impression that the 3rd defendant is residing in the suit property as only permissive occupant and that only later they came to know about the impugned Sale Deed, Exhibit A2 and immediately filed this suit for the said relief. Also, the plaintiffs state that since they along with the defendants 1 and 2 are jointly entitled to the suit property, it is to be construed that they are in joint possession of the suit property. Further, the 3rd defendant has failed to submit any evidence before this court to substantiate his contentions and hence the above said plea of the 3rd defendant could not be sustained. As such it is concluded that the plaintiffs are in joint possession of the suit property along with Defendants 1 and 2 and that the suit has been properly valued and the court fees paid by the plaintiffs satisfies the requirement of the provisions of law. The Additional Issues 1 and 2 are decided accordingly in favour of the plaintiffs.

8.8 This court finds that under Section 3 of the Limitation Act, it is the duty of the Court to identify if a suit has been filed within the period of limitation prescribed. This court finds that the impugned deed Exhibit A2 was executed on 31.03.1993 by the 2nd defendant to the 3rd defendant. The 1st Plaintiff PW1 clearly deposed that he

became aware of the impugned deed only on 08.10.2010. The suit has been filed on 27.01.2012. This court finds that there are clear pleadings and evidence let in this regard on the case by the Plaintiffs to substantiate that the suit is exempted from limitation as mandated under Order VII Rule 6 of CPC. The date of knowledge of the Plaintiffs about the impugned deed to which he is not a party has not been rebutted by the defendants. The suit was filed within 3 years from the date of knowledge about the impugned deed under Article 58 of the Limitation Act and hence this court in its considered view concludes that the suit comes to this court within the period of limitation.

8.9 Now as to declare of the impugned sale deed as null and void, this court is duty bound to identify if the Plaintiffs have clearly established their title over the suit property. From the above discussion, clearly there is no dispute between the parties as to their relationships inter-se. Also, the plaintiffs contend that the suit property is the separate property of their father and have submitted Exhibits A1 and A6, the revenue records for the suit property that stands to show the name of their late father Krishnan. There is no rebuttal evidence submitted on the side of the defendants either to contradict or to refute the evidence submitted by the plaintiffs. Hence, this Court is of the considered view that the plaintiffs along with the 1st and 2nd defendants are jointly entitled for the suit property, which they have inherited on the death of their father late Krishnan and that the 2nd defendant has conveyed the entire suit property including the share of the plaintiffs in the suit property to the 3rd defendant without the consent of the plaintiffs which is not valid, under the circumstance that no person can convey a better title than that he owns is a well established principle of law. In the meantime of the pendency of the suit, the 1st defendant had also died. The third defendant has claimed that the Exhibit A2 Sale Deed was executed by the 2nd defendant with the knowledge of the 1st defendant and that the 1st defendant has also attested the said Sale Deed in Exhibit A2. The 1st defendant has also not denied her

knowledge over the execution of the said Exhibit A2. Hence, this court views that except the part of the 1st and the 2nd defendants' share in the suit property, the 1st and 2nd defendants have no right to convey the due shares of the plaintiffs in the suit property to the 3rd defendant. Hence the Exhibit A2, Sale Deed executed by the 2nd defendant to the 3rd defendant lacks proper title on their part to convey and hence is not valid only with respect to the shares of the plaintiffs in the suit property. In light of the above discussions and on a perusal of the Exhibits A1 to A6, this court finds that the Plaintiffs have duly discharged their initial burden of proof in respect of Sections 101 and 102 of the Indian Evidence Act regarding their right of title in the suit property and the lack of authority of the 2nd defendant to execute the impugned Deed Exhibit A2 to the 3rd defendant that includes the shares of the plaintiffs in the suit property on the date of execution of the sale deed.

8.10 This Court finds that the oral as well as documentary evidences submitted by the plaintiffs remain unchallenged as the defendants remained *exparte* in the suit. This Court finds that there exist no ground to disbelieve the testimony of plaintiffs' witness. In view of unrebutted and unchallenged oral and documentary evidences led by plaintiffs, it deserves acceptance on its face value. Hence, this court is of the view that the plaintiffs are entitled for preliminary decree of partition of suit property as prayed for and that each plaintiffs are entitled for 1/6th share in the suit property. The Issues 1 to 4 are decided accordingly in favour of the plaintiffs.

9. Issue No. 5:

The next aspect for consideration is whether the plaintiffs are entitled for the relief of permanent Injunction as against the 3rd defendant as prayed for. Since, the Issue Nos. 1 to 4 were decided in favour of the plaintiffs and that it has been concluded that the plaintiffs are entitled for 1/6th share each in the suit property and that the Exhibit A2 Sale Deed is null and void and not valid only with respect to the shares of the

plaintiffs with respect to the suit property, this court views that the plaintiffs are entitled for a relief of Permanent Injunction restraining the 3rd defendant from making any encumbrance in the suit property. Hence the Issue No. 5 is decided accordingly in favour of the plaintiffs.

10. Issue No. 6:

As far as Issue Nos.1 to 5 and the Additional Issues 1 and 2 are decided as above, it is concluded that the plaintiffs are not entitled for any other relief. Further, considering the facts and circumstances of the case, there is no costs imposed on either of the party. The issue is decided accordingly.

11. In the above circumstances, this court is of the view that the plaintiffs are entitled for the reliefs as prayed for in the suit.

12. In the result, this suit is decreed. The Sale Deed dated 31.03.1993 registered as Document No. 813/1993 on the file of the SRO, Ponneri is hereby declared as null and void and that the same is not valid and binding upon the plaintiffs only with respect to the shares of the plaintiffs in the suit property. It is further declared that the plaintiffs are each entitled for 1/6th share in the suit property. Also, the 3rd Defendant is hereby restrained by a decree of Permanent Injunction from making any encumbrance on the suit property. No Costs.

Dictated to the steno-typist, directly typed by her in the computer, corrected and pronounced by me in the open Court on this the 17th day of July 2023.

**Sd/- V. Vannamalar,
District Munsif,
Ponneri.**

Plaintiffs' side witnesses:

PW1	Rajendran (1 st Plaintiff)
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Plaintiffs' side Exhibits:

Exhibits	Date	Description of Documents
Exhibit A1	03.02.2011	Chitta – True copy
Exhibit A2	31.03.1993	Certified copy of Sale deed registered as Doc. No. 813 of 1993 at the office of the SRO, Ponneri
Exhibit A3	18.01.2011	Encumbrance certificate - Original
Exhibit A4	17.02.2011	Legal notice issued by the plaintiffs to the defendants – Office copy
Exhibit A5	14.03.2011	Reply notice issued by the 3 rd defendant to the plaintiffs' advocate – Original
Exhibit A6	03.02.2011	Adangal – True copy

Defendants' side witnesses and exhibits: Nil

**Sd/- V. Vannamalar,
District Munsif,
Ponneri.**

Fair/Draft Judgment
O.S. 30/2012
Date:17.07.2023
DMC, PNI.