

IN THE COURT OF THE DISTRICT MUNSIF AT TIRUTTANI

Present : Tmt. S. KAVIPRIYA, B.A., LLB.,
District Munsif, Tiruttani

Dated this 26th day, the Friday of November 2021

O.S.No.69 OF 2018

....

Ester Muthu

...Plaintiff

/vs/

1. Maragadham
2. Sathyasekar
3. Tamizhselvi
4. Vetrivendhan
5. Susigaram
6. Samathuvaraj
7. Veeraswamy
8. Kumar
9. Prathapan
10. Helan Kamalam
11. Elizabath
12. David
13. Mary
14. Sathya
15. Stefen
16. Seleena
17. Hemalatha
18. Sagayam
19. Sub Registrar, Tiruttani

...Defendants

The above suit came up before me for final hearing on today in the presence of M/s. A. Haridoss and A. Akila, Counsels for plaintiff, and Mr. G. Kamalakannan, Counsel for Defendants No.1 to 6, and M/s. B. Radhika, B. Jamuna, Advocates for Defendants No.7 to 18, and Mr. Government Pleader for 19th defendant and D1 to D19 written statement not filed, D1 to D19 called absent, hence, set *ex parte*. Upon hearing the plaintiff's side, upon perusing records and having stood over for consideration till this day, this court delivered the following:

JUDGMENT

This suit has been filed by the plaintiff for Partition to Preliminary Decree directing the Defendants 1 to 18 to divide the suit property into 5 equal shares and allot 1/5th share from the 1/5th share of the 7th Defendant to the Plaintiff and put the Plaintiff in possession of the said 1/5th share and granting permanent injunction against the Defendant 1 to 18 and their men and agents in any manner restraining to them from creating any encumbrance in the suit property in favour of 3rd parties or in favour of the other shares by way of sale deed, sale agreement, mortgage deed, settlement deed etc before the 19th Defendant till the disposal of the suit and for the costs of the suit.

Plaint averments in brief as follows:-

2. The suit property is the ancestral property of the Plaintiff and Defendants herein. The ancestors of the Plaintiff and Defendants were in

continuous possession and enjoyment of the same as rightful owners thereof. The grandfather of the Plaintiff namely Muniyan @ Munuswamy has succeeded to the suit property. The said Muniyan @ Munuswamy has been in continuous possession and enjoying of the suit property till his death. After the death of the said Muniyan @ Munuswamy his sons namely 1. Chinnaswamyh, father of 1 to 6 Defendants, 2). Veeraswamy, 7th Defendant herein, 3. David, 12th Defendant herein, 4). Manogaran, husband of 13th Defendant and father 14 to 17 Defendants herein and 5. Sagayam, 18th Defendant herein have succeeded to the suit property. The above said sons of the said Muniyan @ Munuswamy have been in continuous possession and enjoyment of the suit proeprty. Meanwhile the sons of the said Muniyan @ Munuswamy namely Chinnaswamy and Manogaran have died leaving behind the Defendants 1 to 6 and 13 to 17 as their legalheirs to succeeded to all their estates including the suit property. The Plaintiff and Defendants have continued to be in joint possession and enjoying of the suit property constituting Hindu undivided joint family. The Defendants 7,12 and 18 being the elder members of the said joint family have constituted the undivided Hindu Joint family and were managing all the affairs of the said joint family. Till this date the plaintiff and the Defendants were in joint possession and enjoyment of the suit property without making any division by metes and bounds. The Plaintiff and Defendants 7 to 11 are jointly entitled to 1/5th share in the suit property, the Defendants 1 to 6 are

jointly entitled 1/5th share in the suit property, the Defendants 13 to 17 are jointly entitled to 1/5th share in the suit property, the 18th Defendant is entitled to 1/5th share in the suit property. In the 1st week of January 2018 the Plaintiff has been requesting the Defendants to divide the suit schedule mentioned properties and allot to the Plaintiff's her 1/5th share in the share of 7th Defendant's share 1/5th in respect of the suit property. The Defendants have been evading to dividing the suit property under false pretext. The Defendants have also gone to the extent of saying that the Plaintiff has no right or share in the properties of joint family since the Plaintiff is residing out of the suit village. The Defendants alone will not et any right in respect of the Plaintiff's share in the suit properties. The Defendants are trying to create encumbrance in respect of the suit property. The Defendants instead of dividing the suit property and allotting the Plaintiff's share, have scretly trying to create the shame and nominal documents in respect of the suit property to defeat the claim of the Plaintiff. Thus the Defendants are acting adverse to the interest of the other co-owner the Plaintiff herein. Hence the Plaintiff is not able to issue a pre-suit notice to the Defendants. Since it is no longer safe for the Plaintiff to keep the suit properties without division the Plaintiff has come forward with this suit for partition of the suit properties. All the original revenue documents and the death certificates and legalheir certificate are under the custody of the Defendants. Hence, the plaintiff is obliged to file this suit.

3. The defendants though appeared through their counsel, failed to file written statement and contest their case, hence defendants were called absent and set exparte.

4. The plaintiff in order to substantiate her case has examined himself as Pw1 and marked Ex. A1 to A10.

5. According to the plaintiff, the suit property is the ancestral property of the Plaintiff and Defendants herein. The grandfather of the Plaintiff namely Muniyan @ Munuswamy has succeeded to the suit property. After that the Plaintiff and Defendants were in continuous possession and enjoyment of the suit property the genealogical tree was marked as Ex.A1. The said Muniyan @ Munuswamy has been in continuous possession and enjoying of the suit property till his death. After the death of the said Muniyan @ Munuswamy his sons namely 1. Chinnaswamyh, father of 1 to 6 Defendants, 2). Veeraswamy, 7th Defendant herein, 3. David, 12th Defendant herein, 4). Manogaran, husband of 13th Defendant and father 14 to 17 Defendants herein and 5. Sagayam, 18th Defendant herein have succeeded to the suit property. The sons of said Muniyan @ Munuswamy namely Chinnaswamy and Manogaran have died leaving behind the Defendants 1 to 6 and 13 to 17 as their legalheirs to succeeded to all their estates including the suit property. The Plaintiff and Defendants have continued to be in joint possession and enjoying of the suit property constituting Hindu undivided joint family. The Defendants 7,

12 and 18 being the elder members of the said joint family have constituted the undivided Hindu Joint family and were managing all the affairs of the said joint family. Till this date the plaintiff and the Defendants were in joint possession and enjoyment of the suit property without making any division by metes and bounds. Hence, the Plaintiff and Defendants 7 to 11 are jointly entitled to 1/5th share in the suit property, the Defendants 1 to 6 are jointly entitled 1/5th share in the suit property, the Defendants 13 o 17 are jointly entitled to 1/5th share in the suit property, the 18th Defendant is entitled to 1/5th share in the suit property. While so in the 1st week of January 2018 the Plaintiff requested the Defendants to divide the suit properties and allot to Plaintiff's 1/5th share in the share of 7th Defendant's share 1/5th. But the Defendants have been evading to divide the suit property. The Defendants also gone to the extent of saying that the Plaintiff has no right or share in the suit properties of joint family since the Plaintiff is residing out of the suit village. The Defendants herein alone will not yet any right in respect of the Plaintiff's share in the suit properties. The Defendants are trying to create encumbrance in respect of the suit property. The Defendants instead of dividing the suit property have secretly trying to create the shame and nominal documents in respect of the suit property to defeat the claim of the Plaintiff. Hence the Plaintiff was not able to issue a pre-suit notice to the Defendants. Since it was no longer safe for the Plaintiff. Hence, the Plaintiff filed this suit for Partition to Preliminary

Decree directing the Defendants 1 to 18 to divide the suit property into 5 equal shares and allot 1/5th share from the 1/5th share of the 7th Defendant to the Plaintiff and put the Plaintiff in possession of the said 1/5th share and granting permanent injunction against the Defendant 1 to 18 and their men and agents in any manner restraining to them from creating any encumbrance in the suit property in favour of 3rd parties or in favour of the other shares by way of sale deed, sale agreement, mortgage deed, settlement deed etc before the 19th Defendant till the disposal of the suit.

6. The summon was served to D9 to D12 and called absent set exparte on 22.11.2018 and notice served to D7, D8, D13 to D16 and called absent and set exparte on 27.03.2019 and to set exparte and they filed set aside petition and same was dismissed on 10.02.2021 and D1 to D6 written statement not filed, D1 to D6 called absent and were set exparte and notice sent to D17, D18 and D18, notice served but D17, D18, D19 written statement not filed and set exparte on 24.02.2021, hence whether the Plaintiff is entitled for partition as prayed for.

7. According to the Plaintiff the suit property was an ancestral property of Muniyan @ Munuswamy. After the death of said Muniyan @ Munuswamy the property was divided his sons namely 1). Chinnaswamyh, 2). Veeraswamy, 3. David, 4). Manogaran, and 5. Sagayam. The Chinnaswamy and Manogaran died hence their legalheirs added as parties. To prove the suit property and ancestral property the plaintiff produced

Ex.A2 to A10 which was patta stands in the name of Plaintiff and all the Defendants and the suit property also tallied with the patta produced by the Plaintiffs. Hence, the plaintiff is entitled for partition and also for permanent injunction against the Defendant 1 to 18 and their men and agents in any manner from creating any encumbrance in the suit property in favour of 3rd parties or in favour of the other shares by way of sale deed, sale agreement, mortgage deed, settlement deed etc before the 19th Defendant.

In the Result, this suit is decreed by directing the Defendants 1 to 18 to divide the suit property into 5 equal shares and allot 1/5th share from the 1/5th share of the 7th Defendant to the Plaintiff and put the Plaintiff in possession of the said 1/5th share and by granting permanent injunction against the Defendant 1 to 18 and their men and agents in any manner from creating any encumbrance in the suit property in favour of 3rd parties or in favour of the other shares by way of sale deed, sale agreement, mortgage deed, settlement deed etc before the 19th Defendant.

Dictated to my steno-typist, typed by her directly, corrected and pronounced by me in open Court, the 26th day of November 2021.

Sd/- S. Kavipriya
District Munsif,
Tiruttani.

Plaintiff's side Witness:-

Pw1 – Mr. Ester Muthu (Plaintiff)

Plaintiff's side Exhibits:-

1	Ex.A1	-	The Genealogical tree of plaintiff
2	Ex.A2	18.10.2018	The online copy of Patta No.286
3	Ex.A3	18.10.2018	The online copy of Patta No.757
4	Ex.A4	18.10.2018	The online copy of Patta No.758
5	Ex.A5	18.10.2018	The online copy of Patta No.1437
6	Ex.A6	18.10.2018	The online copy of Patta No.355
7	Ex.A7	18.10.2018	The online copy of Patta No.526
8	Ex.A8	18.10.2018	The online copy of Patta No.1149
9	Ex.A9	18.10.2018	The online copy of Patta No.1409
10	Ex.A10	--	The online copy of guideline value of suit property

Defendants' side Witness and Exhibits:-

NIL

Sd/- S. Kavipriya
District Munsif,
Tiruttani.