

IN THE COURT OF THE DISTRICT MUNSIF AT AMBATTUR.

**PRESENT: TMT.R.SUGANTHI, B.A., B.L.,
DISTRICT MUNSIF, AMBATTUR**

Friday, the 21st day of August 2020.

ORIGINAL SUIT NO.319 OF 2010

BETWEEN

1. Pradeep Kumar (minor aged 16)
2. Anitha (minor aged 11) 1 and 2 Represented
by their father and Next friend Dhanasekaran
3. Soundhararajan
4. E.Rajendhran
5. N.Rajendhran
6. Thrisha (minor aged 10)
7. Dhanush (minor aged 7) 6 and 7 represented
by their father and next friend R.Kumar
8. Surendhar (minor aged 7)
9. Ezhilarasi (minor aged 6) 8 and 9 represented
by their father and next friend E.Chandran
10. Dhanasekar
11. Baskaran
12. Sudhakaran
13. Vasanthi
14. Lalitha
15. Suseela

..... Plaintiffs

Versus

1. Thiruvenkadam
2. Saravanan
3. Miss.T.Punitha
4. Miss.T.Vasumathi
5. Miss.Karpagam
6. Miss.Padmapriya
7. K.Chandrasekar
8. O.Sajesh
9. C.Jose Kurian
- 10.V.P.Ajith Kumar
- 11.N.Sanjeev
- 12.Chinnammal

..... Defendants

This suit having coming on 21.08.2020 before me for final hearing in the presence of Shri.N.R.Gopaalan, learned counsel for the plaintiffs and since D1 to D5 and D12

were set exparte on 11.08.2018, the suit is not pressed as against D6 to D11, heard arguments through video conference proceedings on 30.07.2020, on perusal of the written arguments filed by the learned counsel for plaintiff and, also on perusal of the records, having stood over for consideration till this day, this Court delivers the following:

J U D G M E N T

1. Since the plaintiffs had already not pressed as against the defendants 6 to 11 and in respect of schedule 'A to G' by filling memo dated 14.11.2011, 08.01.2013, this suit is filed by the plaintiffs for the relief of declaration that plaintiffs 1, 2, 10, 3, 5 and 11 to 15 are the absolute owners of the extent detailed in schedule 'H' for a consequential permanent injunction restraining the 12th defendant or anybody on her behalf from interfering with the possession of plaintiffs 1, 2, 10, 3, 5 and 11 to 15 of schedule 'H' property.

2. CASE OF THE PLAINTIFF: (a) 1.09 Acres in S.No.764 was purchased by one Egambara Naicker under sale deed dated 05.03.1930. The said land was later subdivided as S.No.764/2. Balakrishnan, Chinnaasami Naicker, Kanniappa Naicker and Dhuraisami Naicker were the 4 sons of said Egambara Naicker. The above said 4 sons orally divided 1.09 Acres between them. Because Balakrishnan was eldest, was allotted the southern most 31 cents, the other 3 sons were allotted 26 cents respectively. The 26 cents allotted to Chinnaasami Naicker is schedule 'A' suit property. The said Chinnaasami Naicker and his wife Kanniammal had no issues. After death of Chinnaasami Naicker in the year 1958, Kanniammal succeeded to the aforesaid 26 cents and other properties of

Chinnsami Naicker which were as follows: (1) S.No.764/2 – 26 cents (2) S.No.764/1 – cents (3) 3.28 Acres of cultivable lands in Thirumullaivoyal village (4) The site along with the house in Mettu street, Ayanavara. For the lands shown as items 1 to 3 Kanniammal shown as one of the Pattadars of Patta No.434. Because of Kanniammal had no issues, she was bringing up her sister Lakshmi's daughter Mohana @ Chandra as her daughter. Kanniammal bequeathes all her properties in favour of Mohana @ Chandra under will dated 26.05.1972 registered as doc.No.23/1972 in Sub-registrar at Sembium on the death of Kanniammal on 15.02.1977, the will came into force and Mohana @ Chandra become the owner of the properties covered under the will. The above said will probated in the Hon'ble High Court at Madras in OP.No.254/1977. The aforesaid Mohana @ Chandra and her husband Natarajan had 8 issues. All the plaintiffs are legal heir of the Mohana. The said Mohana was died in the year of 2001. Her husband Natarajan was dead in the year 2002. The 8 issues of Mohana divided the said 26 cents in S.No.764/2 orally between themselves in the year 2003. It has been mentioned as schedule 'B to G' of suit properties. Dhuraisami Naicker was younger brother of Chinnsami Naicker. Chinnsami Naicker had left behind his wife Kanniammal as his sole legal heir. But Dhuraisami Naicker who had no rights in the properties of Chinnsami Naicker, it came to known that Dhuraisami Naicker had executed a will dated 05.08.1988 and that he had purported to give properties of the Chinnsami Naicker to his family members. It also came to known that the said Dhuraisami Naicker family members had sold the properties of Chinnsami Naicker by themselves on through their agents 1, 5, 12 defendants are children of Dhuraisami Naicker. The defendant 2 to 4 are

the children of the 1st defendant. It was learnt that the defendant 1 to 5 had sold portions of 'A' schedule land to the defendant 6 to 11. The documents as between the defendant 1 to 11 have been created without any right, not being parties to the said documents, are not on the plaintiff on their rights in the property. The said documents to be northeast and they need not seek any prayer. The above said Egambara Naicker had purchased another extent of 15 cents in S.No.764/1 in the year of 1930 itself. When the 4 sons of Egambara Naicker divided 1.09 Acres between them, Balakrishnan the eldest was given 31 cents (5 cents more than the other 3 brothers). Hence, Chinnasami Naicker, Kanniappa Naicker and Dhuraisami Naicker took 5 cents each out of the 15 cents in S.No.764/1. The southern 5 cents was allotted to the share of Chinnasami Naicker. The middle 5 cents was allotted to Kanniappa Naicker and the northern 5 cents was allotted to the share of Dhuraisami Naicker. The said 5 cents of Chinnasami Naicker is shown as Schedule 'H' of the plaint. Kanniammal and later Mohana @ Chandra through the Will of Kanniammal and the children of Mohana @ Chandra after her death were entitled to the 5 cents detailed in the Schedule 'H' of the plaint. The said land is vacant all along. But Dhuraisami Naicker appears to have included the Schedule 'H' land also in the Will dated 05.08.1988 executed by him.

(b) As per the said Will schedule 'H' is claimed to have been given to the 12th defendant Chinnammal. Dhuraisami Naicker was dead in the year 2006. The will executed by Dhuraisami Naicker, the recitals therein and the dispositions under the same will not bind either the plaintiffs or their right. Though the plaintiff had prayed for the reliefs of 'declaration of title' and for 'consequential permanent injunction' against the defendants 6

to 11 in respect of schedules 'B' to 'G' which are portions of schedule 'A', The plaintiffs have already had this suit "not pressed" as against the defendants 6 to 11 and in respect of schedules 'A' to 'G' of the plaint. Hence, the contest now is only in respect of the 5 cents of land in S.No.764/1 detailed in Schedule 'H' of the plaint. A written statement verified by the 5th defendant Karpagam and adopted by the defendants 1 to 4 and 12 was filed. Fact remains that the ownership of Egambara Naicker of 1.09 Acres in S.No.764/2 and 15 cents in S.No.764/1, the division of the said lands between the 4 sons of Egambara Naicker were not denied in the said written statement. Though the contesting defendants filed written statement, they did not choose to let in any oral or documentary evidence. On all the notice sent to all the defendants. Defendants 6 to 11 offered to pay a specific amount regarding the extent in schedule 'A' to the plaintiffs. Hence, suit as against defendant 6 to 11 as not pressed. Plaintiff has come up with the instant suit for declaring the title of the plaintiffs through the schedule 'H' land in the plaint by boundaries and granting permanent injunction restraining the defendant 1 to 5 and 12 from interfering with the possession of schedule 'H' suit property, plaintiff has come up with the instant suit.

3. In spite of granting sufficient opportunity to the defendant 1 to 5 and 12 due to their failure to file written statement, defendants set exparte on 11.08.2018.

4. **POINT FOR DETERMINATION:** Whether the plaintiffs are entitled for the relief declaration and permanent injunction as prayed for?

5. On the side of plaintiff, 12th plaintiff is examined as PW1 and Ex.A1 to Ex.A7 documents were exhibited. No one is examined and no documents were exhibited on the side of defendants.

6. Heard the submissions made by the learned counsel for the plaintiffs through video conference proceedings 30.07.2020 and written arguments filed. Also, perused the records.

7. **ANSWER FOR POINT FOR CONSIDARATION:** (a) Suit for declaration that plaintiffs 1 to 10, 3, 5 and 11 to 15 are the absolute owner of the schedule 'H' suit property and permanent injunction as against defendant 12 from interfering with the possession of the schedule 'H' suit property. As per plaintiff contention that, one Egambara Naicker had 4 sons. Egambara Naicker purchased the properties measuring 1.09 Acres in S.No.764/2, 15 cents in S.No.764/1 through registered sale deeds in the year of 1930. It have been marked as Ex.A1 and Ex.A2. The 4 sons of Egambara Naicker orally partitioned 1.09 Acres in S.No.764/2 and S.No.746/1. As per oral partition 4 sons of Egambara Naicker got shares as followingly:

	S.No.764/2	S.No.764/1
Balakrishnan	31	Nil
Chinnasami	26	5
Kanniappan	26	5
Dhurasami	26	5

(b) Suit schedule properties belongs to Chinnasami Naicker, who got property from between his brothers by oral partition. The said Chinnasami Naicker and his wife Kanniammal had no issues. Subsequently he died living behind wife and adoptive daughter namely Mohana @ Chandra. The said Kanniammal has executed a registered will dated 26.05.1972 regarding some other properties and there by bequeathing the properties in favour of adoptive daughter Mohana @ Chandra. The factum of adoption is mentioned in the registered will dated 26.05.1972. Subsequently, Kanniammal died leaving behind the adoptive daughter Mohana @ Chandra who is the mother of 3 to 5 and 11 to 15 plaintiffs. The factum of adoption is not disputed by contesting the suit. Eventhough, the contesting defendants filed written statement they did not deny the factum of adoption and not to choose to let in any oral and documentary evidence. Since factum of adoption is mentioned in a registered Will executed before 45 years itself.

(c) When being so, 4th son of Egambara Naicker namely Dhuraisami Naicker bequeathed the properties, included the shares of Chinnasami Naicker in S.No.764/2, S.No.764/1 to his children under a will dated 05.08.1988. All the plaintiffs are legal heirs of the aforesaid Mohana, defendant 1, 5, 12 are the legal heir of Dhuraisami Naicker, D6 to D11 subsequent purchasers from legal heir of Dhuraisami Naicker. Since compromise made between plaintiffs and D6 to D11 subsequent purchasers suit withdrawn as against D6 to D11 in respect of schedule 'A' of Suit property (i.e.) schedule 'A' to 'G' of suit properties. Now, the plaintiffs praying declaration of title for schedule 'H' suit property alone. Hence, being Mohana @ Chandra was a adoptive daughter of said Chinnasami Naicker

and Kanniammal she had succeeded the suit properties as a sole legal heir. After the death of Mohana @ Chandra plaintiffs are entitled for the schedule 'A and H' suit properties. Since, suit is not pressed as against the relief of schedule 'A' suit property the plaintiffs are entitled for schedule 'H' suit property. Without having any right, interest or title over the suit property, the aforesaid Dhuraisami Naicker could not executed the Will dated 05.08.1988 and bequeathed the suit properties belongs to the plaintiffs to his legal heirs.

8. In the result for the foregoing reasons, the suit is hereby decreed as follows:

(i) declaration that plaintiffs 1, 2, 10, 3, 5 and 11 to 15 are the absolute owners of the extent detailed in schedule 'H' for a consequential permanent injunction restraining the 12th defendant or anybody on her behalf from interfering with the possession of plaintiffs 1, 2, 10, 3, 5 and 11 to 15 of schedule 'H' property and;

(ii) No cost.

Dictated to the steno-typist, typed directly by her in the desktop, corrected and pronounced by me in the open Court on this the 21st day of August 2020.

DISTRICT MUNSIF,
AMBATTUR.

PLAINTIFF SIDE WITNESSES:

PW1 Sudhakaran

PLAINTIFF SIDE EXHIBITS:

Exhibit A1 05.03.1930 Sale deed – Certified copy

Exhibit A2 05.03.1930 Sale deed – Certified copy

Exhibit A3	20.05.2009	Notice – Office copy
Exhibit A4	--	Acknowledgment card – Original
Exhibit A5	--	Acknowledgment card – Original
Exhibit A6	--	Acknowledgment card – Original
Exhibit A7	19.04.1978	Probate will order – Certified copy

DEFENDANTS SIDE WITNESSES AND EXHIBITS: NIL.

DISTRICT MUNSIF,
AMBATTUR.