

**IN THE COURT OF THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VELLORE, VELLORE DISTRICT.**

PRESENT: Tmt.G.Santhi, B.A., M.L.,
I Additional District and Sessions Judge,
Vellore.

Wednesday, the 20th day of November, 2024

O.S. No.182/2022
(CNR No.TNVL01-004404-2022)

S. Arumugam . . . Plaintiff

-Versus-

1) S. Subramani
2) S. Muruganandam
3) S. Sundaramoorthy . . . Defendants

This suit is came up before court on 18.11.2024 for final hearing in the presence of Thiru. K.M. Boopathi, counsel for the Plaintiff and Thiru.V. Ashok Kumar, counsel for the Defendants 1 to 3 and when the case was posted for filing of written statement the defendants were called absent, set exparte and on hearing the arguments of plaintiff's side and upon perusing the entire case records and having stood over for consideration till this day, this Court delivered the following:-

J U D G M E N T

This suit has been filed seeking the relief of partition to divide the suit schedule properties into 4 equal shares and allot one such share to the plaintiff

and put into separate possession and enjoyment of the same and to appoint an Advocate commissioner to effect the said partition without detriment to any of the shares and to declare the registered settlement deeds dated 11.07.2019 vide Doc.No.4907/2019, 09.07.2020 vide Doc.No.3946/2020, 09.07.2020 vide Doc.No.3947/2020, 20.07.2020 vide Doc.Nos.4226 and 4227/2020 respectively and for costs.

2. **Brief averments of the Plaintiff:**

a) Originally the suit 'A' schedule property was the ancestral property of the 1st defendant by way of a registered partition deed dated 27.09.1975. In the said partition deed, the suit 'A' schedule property was allotted to the share of the 1st defendant by way of 'C' schedule with absolute right. Since the date of partition deed, the 1st defendant has been in possession and enjoyment of the same and the revenue records also mutated in his name and Patta also issued for the same. Since the 'A' schedule properties are the lands with good irrigation facility, sufficient income from the said lands and the income derived from the said lands are sufficient enough to maintain the family and also to purchase the other properties. The suit 'B' schedule properties were purchased from the above said ancestral properties and joint family nucleus, in the name of the 1st defendant who is the Karta of the Hindu Joint Family constituted by the plaintiff and defendants by way of a registered sale deed

dated 10.08.1994 and the Suit 'C' schedule property was purchased in the name of 1st defendant by way of registered sale deed dated 25.03.1995. The 'D' and 'E to I' schedule properties were purchased from said ancestral and joint family nucleus in the name of 1st defendant by way of registered sale deeds dated 25.03.1981 and 13.12.1976 respectively. The 1st defendant alone is in the management of the entire joint family property. The said suit 'B to I' schedule properties are joint family properties and right from the day one it has been treated as joint family properties and the 1st defendant has no independent right over the same. The plaintiff and the defendants are in joint and constructive possession and enjoyment of the same. The defendants 2 and 3 are having right and share over the suit schedule properties by birth itself.

In the month of January 2021, the defendants 2 and 3 have joined together and showed some hostile attitude towards the plaintiff and acting interest of the plaintiff and thereby create troubles and interfere with the plaintiff joint possession and enjoyment of the suit schedule properties. Thereafter, the plaintiff verified the encumbrance of the suit properties and came to know that the defendants 2 and 3 have joined together in order to grab the suit schedule properties created three separate registered settlement deeds dated 09.07.2020 in Doc.Nos. 3946/2020, 3947/2020 and dated

11.07.2019 in Doc.No.4907/2019 alleged to have been executed by the 1st defendant in favour of 2nd defendant and another three separate registered settlement deeds dated 20.07.2020 in Doc.Nos.4226/2020, 4227/2020 and 4228/2020 alleged to have been executed by the 1st defendant in favour of the 3rd defendant. Infact, the 1st defendant has aged about 94 years taking advantage of his old age, his mental capacity, the defendants 2 and 3 created the above said documents in their favour. The 1st defendant has not got individual right over the suit property and he has no right to execute any document in favour of the defendants 2 and 3 will not bind the plaintiff and his share over the suit properties. The plaintiff has also issued legal notice dated 14.02.2022 to the defendants and called upon them to divide the suit schedule properties and give his share. But, they failed to give consent for partition and no reply was given for the same. The plaintiff and the defendants are all constitute Hindu undivided joint family and they are equally entitled to get 1/4th share each. There is no maintenance holder or trust over the properties. Hence the plaintiff has filed this suit for partition and separate possession and also for declaration of settlment deeds are null and void.

3. After received the summon, the defendants 1 to 3 entered their appearance through their counsel before this court on 19.12.2022.

Subsequently, they failed to appear before the court, after sufficient time, the defendants did not file written statement. Hence, the defendants No. 1 to 3 were called absent and set *ex parte* on 13.04.2023. On the side of the Plaintiff, PW1 has been examined and Ex.A1 to Ex.A19 have been marked. No oral and documentary evidence on the side of the defendants.

4. The point is to be decided that,

Whether the plaintiff is entitled to get the Preliminary decree as claimed by him?

5. The plaintiff present. Heard. He stated that the plaintiff proved the case through the evidence of PW1 and documents and he filed citations which is held as *(2004 (3) CTC 92) and (2004 (1) CTC 619)*.

6. To prove the case of the plaintiff, the plaintiff himself examined as PW.1 and filed the proof affidavit and Ex.A1 to Ex.A19 were marked through him. Ex.A1 is the Certified copy of the registered partition deed in Doc.No.3675, dated 27.09.1975 between 1st defendant and his brothers. Ex.A2 is the Certified copy of the registered sale deed dated 14.12.1976 in the name of the 1st defendant. (it has wrongly mentioned in the averments and proof affidavit as 13.12.1976) Ex.A3 is the Certified copy of the registered sale deed dated 25.03.1981 in the name of the 1st defendant. Ex.A4 is the Certified copy of the registered sale deed dated 10.08.1994 in the name of the

1st defendant. Ex.A5 is the Certified copy of the registered sale deed dated 25.05.1995 in the name of the 1st defendant. Ex.A6 is the Certified copy of the registered sale deed dated 11.07.2019 in the name of the 1st defendant. Ex.A7 is the Certified copy of the registered sale deed dated 09.07.2020 in the name of the 1st defendant in Doc.No.3946/2020. Ex.A8 is the Certified copy of the registered sale deed dated 09.07.2020 in the name of the 1st defendant in Doc.No.3947/2020. Ex.A9 is the Certified copy of the registered sale deed dated 20.07.2020 in the name of the 1st defendant in Doc.No.4226/2020. Ex.A10 is the Certified copy of the registered sale deed dated 20.07.2020 in the name of the 1st defendant in Doc.No.4227/2020. Ex.A11 is the Certified copy of the registered sale deed dated 20.07.2020 in the name of the 1st defendant in Doc.No.4228/2020. Ex.A12 to Ex.A15 are the Online copy of the Patta stands in the name of the 1st defendant, Ex.A16 is the Legal Notice issued by the plaintiff dated 14.02.2022, Ex.A17 is the Acknowledgment card, Ex.A18 is the online copy of the Guideline value, Ex.A19 is the online copy of the Encumbrance Certificate.

7. Further the learned Counsel for the plaintiff filed citation in which is held as follows:

- (i) ***(2004 (3) CTC 92) Shanmugaiah and another -Vs.-
Thirumalayandi alias Thirumalai Pandaram and 5 others,***

Hindu Law – Co-parcenary property – Settlement Deed created by one Co-parcener in favour of his wife and other Co-parceners who are not parties to the deed – One co-parcener cannot create settlement deed in regard to his share in co-parcenary property without consent of all other co-parceners – Settlement Deed executed by husband in favour of his wife in respect of his undivided 1/3 share in co-parcenary property without consent of two other co-parceners is invalid.

(ii) (2004 (1) CTC 619) P.S. Sairam and another -Vs.- P.S. Rama Rao Pisey and others,

Hindu Law – In joint Family so far as immovable properties are concerned if it stands in the name of individual member there would be presumption that such property belongs to joint family.

8. The learned Counsel for the plaintiff in support of his contention relied on a decision of this court, which in the opinion of this Court, squarely applies to the present facts of the case.

9. On perusing the evidence of P.W.1 and the documents Ex.A1 to A19, the plaintiff has proved the plaint averments. To rebut those contentions, no materials had been produced on the side of the defendants and the defendants 1 to 3 were called absent and set exparte inspite of more

than sufficient time given and failed to contest the case on merits. Therefore, the preliminary decree of partition is passed as prayed for.

In the result,

(i) the preliminary decree of partition is passed as prayed for with cost. The plaintiff is entitled to get the 1/4th shares in the suit properties and get the separate possession in his due share.

(ii) The registered settlement deed dated 09.07.2020 in Doc.No. 3946/2020,

(iii) the registered settlement deed dated 09.07.2020 in Doc.No. 3947/2020,

(iv) the registered settlement deed dated 11.07.2019 in Doc.No.4907/2019,

(v) the registered sale deed dated 20.07.2020 in Doc.No.4226/2020

(vi) the registered sale deed dated 20.07.2020 in Doc.No.4227/2020 are hereby declared as null and void and the same will not bind the Plaintiff.

Time for 3 months for compliance report call on 20.02.2025. In case of failure, for further proceedings. Call on 20.02.2025.

Dictated to the Steno-Typist, transcribed by her, corrected and

pronounced by me in the Open Court, on this the 20th day of November, 2024.

I Additional District & Sessions Judge,
Vellore.

Witnesses examined on the side of the Plaintiff:

PW1 – Thiru. Arumugam

Exhibits marked on the side of the Plaintiff:

Ex.A1	-	27.09.1975	-	Certified copy of the registered partition deed in Doc.No.3675, dated 27.09.1975 between 1 st defendant and his brothers
Ex.A2	-	14.12.1976	-	Certified copy of the registered sale deed in the name of the 1 st defendant.
Ex.A3	-	25.03.1981	-	Certified copy of the registered sale deed in the name of the 1 st defendant.
Ex.A4	-	10.08.1994	-	Certified copy of the registered sale deed in the name of the 1 st defendant.
Ex.A5	-	25.05.1995	-	Certified copy of the registered sale deed in the name of the 1 st defendant
Ex.A6	-	11.07.2019	-	Certified copy of the registered sale deed in the name of the 1 st defendant.
Ex.A7	-	09.07.2020	-	Certified copy of the registered sale deed in the name of the 1 st defendant in Doc.No.3946/2020.
Ex.A8	-	09.07.2020	-	Certified copy of the registered sale deed in the name of the 1 st defendant in Doc.No.3947/2020
Ex.A9	-	20.07.2020	-	Certified copy of the registered sale deed in the name of the 1 st defendant in Doc.No.4226/2020.

Ex.A10	20.07.2020	Certified copy of the registered sale deed in the name of the 1 st defendant in Doc.No.4227/2020.
Ex.A11	20.07.2020	Certified copy of the registered sale deed in the name of the 1 st defendant in Doc.No.4228/2020.
Ex.A12	29.07.2016	Online copy of the Patta stands in the name of the 1 st defendant. (Patta No.511)
Ex.A13	26.05.2022	Online copy of the Patta stands in the name of the 1 st defendant. (Patta No.1274)
Ex.A14	29.07.2016	Online copy of the Patta stands in the name of the 1 st defendant. (Patta No.1218)
Ex.A15	26.05.2022	Online copy of the Patta stands in the name of the 1 st defendant. (Patta No.1346)
Ex.A16	14.02.2022	Legal Notice issued by the plaintiff .
Ex.A17	--	Acknowledgment card (3 Nos.)
Ex.A18	02.06.2022	Online copy of the Guideline value
Ex.A19	26.05.2022	Online copy of the Encumbrance Certificate.

Witnesses and Exhibits on the side of the Defendant: - Nil -

I Additional District & Sessions Judge,
Vellore.

FAIR/DRAFT JUDGMENT (EXP)

OS.No.182/2022

CNR No.TNVL01-004404-2022

D.O.D.20.11.2024

I ADJ, Vellore.