

**In the Court of the Additional District & Sessions Judge,
Srivilliputtur.**

**Present: Thiru. B.C.Gopinath, M.L.,
Additional District and Sessions Judge,
Srivilliputtur.**

Friday, this the 1st day of April 2022

O.S.No. 133/2019

1) R. Ponnammal

2) R. Vijaya @ Natchiyar ... Plaintiffs

Vs

1) P. Kuthalingam (Died)

2) K.P. Lakshmanan

3) K. Ponnambalam

4) L. Ponnambalam

*5) K. Saraswathi

*6) M. Seethalakshmi ... Defendants

* (The defendants 5 & 6 are impleaded as the legal heirs of the deceased 1st defendant as per order in I.A. No. 1/2019 dated 12.02.2020)

(Amended as per order in I.A. No. 2/2020 dated 10.02.2021)

This Suit coming before me for final hearing on 05.03.2022 in the presence of Thiru. P.S. Murugan, Advocate for the Plaintiffs and the

defendants being set exparte upon hearing the plaintiff, perusing the records, this court passed the following....

ORDER

Suit for partition of plaintiff's 2/4th share in the suit properties and a declaration that the settlement deeds dated 27.06.2019 will not bind the plaintiffs and for costs.

PLAINT AVERMENTS IN BRIEF

The suit properties and other properties originally belonged to one Lakshmanaperumal Mooppannar. He died long before leaving behind his only daughter Ponnammal. The said Ponnammal was in possession and enjoyment of the suit properties. Ponnammal had 2 sons and a daughter named Ponnambalam (died), Lakshmanaperumal and Muthulakshmiammal. After Ponnambalam's death her children effected a partition among themselves through a registered partition deed dated 06.12.1967. In the said partition Item No. 1 to 24 of the suit properties was allotted to Ponnambalam who is father of the plaintiffs, defendants 1 & 2. From the date of said allotment, Ponnambalam was in possession and enjoyment of his share of properties. Ponnambalam had 2 sons and 2 daughters namely plaintiffs 1 & 2, D1 & D2. They enjoyed the properties in common. Ponnambalam died on 11.04.2014 and thereby 1/4th share devolved upon all the children. But no partition was

effected. The plaintiffs were demanding their share in the suit properties from the defendants 1 & 2 from January 2019. But the defendants 1 & 2 simply protracted. So the plaintiffs sent a notice dated 05.07.2019 which was received by defendants 1 & 2 on 06.07.2019. The defendants 1 & 2 issued reply notice with false averments dated 13.07.2019. In the said reply notice the defendants falsely alleged that an oral partition was effected on 22.04.1995 between Ponnambalam and his sons and a family arrangement was made on 28.10.2002 in accordance with the oral partition. The defendants have taken such a stand to defeat the rights of the defendants. The plaintiffs were taking care of Ponnambalam during his old age. No such family arrangement was made. In the reply notice the defendants also alleged that Item No. 19 was already settled in favour of defendants 3 & 4 on 27.06.2019. The plaintiffs understood from encumbrance certificate that Item No. 19 was divided into 2 and settled in favour of defendants 3 & 4. The said settlement is not valid under law and will not bind the plaintiffs. Therefore the plaintiffs are entitled to 2/4th share in the entire suit properties and a declaration that the settlement deeds dated 27.06.2019 will not bind the plaintiffs.

2) From the records, it is seen that while the plaint was presented on 06.09.2019, D1 Kuthalingam died on 11.09.2019. His legal heirs (D5 & D6) were impleaded as per order in I.A.1/2019 dated 12.02.2020. Although D2 to

D4 engaged a counsel, they did not file their written statement and so they were set exparte on 01.04.2021. Thereafter the case was made over to this Court from Principal District Court. The newly added the defendants D5 & D6 also did not file their written statement and hence they were also set exparte.

3) During exparte evidence the 2nd plaintiff Vijaya @ Natchiyar examined herself as PW1 and marked Ex.P1 to P11. Arguments of the plaintiff was heard.

4) Now the point for consideration is whether the relief sought for can be granted?

5) POINT

The 2nd plaintiff Vijaya @ Natchiyar who was examined as PW1, filed an evidence affidavit with averments in tune with the plaint. According to the plaintiffs, the suit properties devolved upon Ponnambalam, the father of plaintiffs and defendants 1 & 2 by way of registered partition deed dated 06.12.1967 (Ex.A1). Ponnambalam died on 11.04.2014 without making any arrangements (Death Certificate Ex.A2). The plaintiffs and defendants 1 & 2 being the children of Ponnambalam are equally entitled to 1/4th share in the suit property. But the defendants 1 & 2 denied it and so the plaintiffs issued a legal notice dated 05.07.2019 (Ex.A4). The defendants 1 & 2 issued a reply

notice dated 13.07.2019 (Ex.A6) stating that a oral partition was already effected in 1995 with the same a family arrangement was made in the year 2002. But according to the plaintiffs no such oral partition or family arrangement was ever entered into. The defendants 1 & 2 also divided item No. 19 of the suit property into 2 equal shares and settled the same in favour of their sons (D3 & D4). The defendants 1 & 2 have no such right to execute a settlement deed and therefore it does not bind the plaintiffs.

6) The defendants have not filed any written statement to deny, refute or controvert the plaintiffs' case. Therefore this court is left with the only option of appreciating the plaintiffs case as spoken by PW1 Vijaya @ Natchiyar. According to them, the properties devolved upon their father by way of partition deed in Ex.A1 on 06.12.1967. The properties so acquired by Ponnambalam gets the character of his self-acquired property and the plaintiffs and defendants 1 & 2, being the legal heirs of Ponnambalam are equally entitled to 1/4th share. The defendants have, without absolute rights effected a settlement deeds Ex.A7 and A8 in favour of their sons. This will not bind the plaintiffs 2/ 4th share in the property.

7) The plaintiffs have given up their right to partition in respect of item No. 3, 18, 21 and 22 of the amended plaint. Therefore the suit is liable to be dismissed in so far as it relates to those properties. The points are answered

accordingly. The plaintiffs are accordingly entitled to a preliminary decree in respect of the properties other than item No. 3, 18, 21 & 22 and the relief of declaration in the respect of the settlement deeds in so far as it relates to their 2/4th share in the same.

In the result, a preliminary decree is passed as follows:-

- 1) The suit in so far as it relates to Item No. 3, 18, 21 and 22 of the suit properties is dismissed as given up.
- 2) The remaining items of the properties are directed to be divided into 4 equal shares and 2 each shares be allotted to the plaintiffs.
- 3) The defendants are jointly entitled to 2/4th share in the same properties.
- 4) It is hereby declared that the settlement deeds dated 27.06.2019 executed by D1 & D2 in favour of D3 & D4 does not bind the plaintiffs 2/4th share in the same.
- 5) The plaintiffs shall file an application for final decree within 2 months.
- 6) The parties shall bear their respective costs.

Dictated to Steno Typist, typed by her in computer, then corrected and pronounced by me in open court, on this the 1st day of April 2022.

Additional District and Sessions Judge,
Srivilliputtur.

List of Witnesses and documents:**Plaintiff side evidence**

PW-1 – R. Vijaya @ Natchiyar (2nd plaintiff)

Plaintiff side documents

Ex.A1 – 06.12.1967 – Partition deed (certified copy)

Ex.A2 – 24.11.2021 – Death certificate of Ponnambalam

Ex.A3 – 19.05.2014 – Legal heir certificate of Ponnambalam

Ex.A4 – 05.07.2019 – Legal notice

Ex.A5 – Acknowledgment card received by the defendants 1 & 2

Ex.A6 – 13.07.2019 – Reply notice by the defendants 1 & 2.

Ex.A7 – 27.06.2019 – Settlement deed (certified copy)

Ex.A8 – 27.06.2019 – Settlement deed (certified copy)

Ex.A9 – Town Survey Land Register for the suit properties 21 to 24

Ex.P10 – Guideline value for the suit properties 21 to 24.

Ex.P11 – Guideline value for the suit properties 1 to 24.

Defendant side evidence

- Nil -

Defendant side document

- Nil -

Additional District and Sessions Judge,
Srivilliputtur.

Additional District & Sessions Court,
Srivilliputtur.
OS No.133/2019
Fair/Draft/Order(Exparte)
Dated : 01.04.2022.