

**IN THE COURT OF THE PRINCIPAL DISTRICT JUDGE,
TIRUVANNAMALAI**

PRESENT: Thiru. P.Mathusuthanan, B.A.B.L.,
Principal District Judge,
Tiruvannamalai

Saturday, the 07th day of October - 2023

Original Suit No.223/2022
CNR No.TNTM01-003893-2022

1. Dhanakoti
2. Selvi
3. Mathialagi

..... Plaintiffs

-Vs-

1. Subramania gounder(alias) Mandiri
2. Shanthi,
3. Arumugam

..... Defendants

This suit coming before me on this 06.10.2023 in the presence of Thiru. V.G.Murali and V.G.Ravichandran learned Advocates appearing for the plaintiff and the defendants 1 to 2 having remained exparte and Thiru.B.Manjunathan learned Advocate on record for the 3rd defendant did not turn up for filing written statement and the 3rd defendant remained exparte and upon hearing the argument of plaintiff side and perusing entire case records and having stood over for consideration till this date, this court delivered the following...

JUDGMENT

This suit has filed by the plaintiffs under order VII, Rule 1 and section 26 of CPC for seeking the relief of partition by directing division of suit properties into 5 equal shares and allot 3 equal shares to the plaintiffs and for deliver possession of the suit properties allotted to them through process of court and for award the cost of the suit.

2. Brief averments of the plaint are as follows:

One Chenna Ammal and Mannu gounder were permanent residents of Melcholamkuppam village, Kalasapakkam Taluk. Out of the lawful wedlock they begot one son by Subramania gounder (1st defendant) and a daughter by name Kamatchi. The only daughter of Mannu gounder namely Kamatchi died about 45 years back without any issues. The only son by Mannu gounder Subramania gounder inherited items 1 to 11 of the suit properties after the demise of his father. The 1st defendant married one Amirtham as his wife and out of the lawful wedlock begot plaintiffs 1 to 3 and 2nd defendant. 3rd defendant is the husband of 2nd defendant.

The properties shown as items 1 to 11 of the schedule and all the ancestral properties of the family and each member of the family is entitled to equal share. From out of the ancestral properties surplus income, one item of property (ie item 12) was purchased by the 1st defendant under document

No.1502/1975 registered in the office of the Sub Registrar, Kadalai. The only avocation of the 1st defendant is agriculture and he did not have any other avocation other than agriculture. Thus, all the properties shown in the schedule are ancestral properties. There was cordial relationship as between the sharers till the demise of mother Amirtham about 2 years back. After the demise of mother Amirtham there was sea change in the conduct and character of the 1st defendant. Infact all the children of the 1st defendant were taking care of the parents with love and affection. Now after the demise of Amirtham, 1st defendant because of advanced age is residing in the ancestral house with 2nd and 3rd defendants are acting against the interest of the plaintiffs and are bent upon deceiving the plaintiffs their due share.

The 2nd defendant in order to deny the plaintiffs their due share in the ancestral properties herein has taken a void and unenforceable settlement deed pertaining item No.11 of the schedule mentioned property on 13.12.2019 in her name. The recitals in the said settlement deed will clearly spelt out that the said item of property is the ancestral property and there cannot be any valid settlement deed. The plaintiffs ignore the said settlement deed since the same is void one. The plaintiffs are filing the registration copy of the above said settlement deed.

Similarly, the 3rd defendant herein had taken a void and unenforceable sale deed pertaining to item No.12 of the schedule mentioned property from the 1st defendant on 22.07.2021. The recitals in the said sale deed are all self serving, made by the 3rd defendant to suit the occasion. There was no need nor necessity to alienate any portion of the ancestral property. Moreover the 1st defendant is aged about 90 years. Taking advantage of helplessness of the 1st defendant the above sale deed is taken. The said sale deed is not valid one and will not binding the plaintiffs' 3/5 share.

Because of the indifference conduct of the defendants in deceiving the plaintiffs, their due share, the plaintiffs left with no other option herein caused a notice to defendant through their advocate on 27.07.2022, calling upon them to effect division of the suit properties into 5 share and allot the plaintiffs 3 share thereon. The defendants 1 to 3 herein received the notice caused by the plaintiffs and have given a reply on 12.08.2022 containing false and untenable allegations. Hence the suit.

3. The defendants 1 to 3 having remained exparte.

4. The point that arises for determination is that

Whether the plaintiff is entitled for suit claim as sought for?

5. During the enquiry, on the side of the plaintiffs, the 1st plaintiff filed her proof affidavit and examined herself as PW1 and marked Ex.A1 to Ex.A.6 to corroborate the averments of the plaint.

6. **Point:-**

Heard the plaintiff side and perused the material on records and evidence produced on plaintiffs' side.

7. On perusal of the averments of the plaint as well as oral and documentary evidence adduced on the side of the plaintiffs, it reveals that the plaintiffs and 2nd defendant are daughters of 1st defendant and his wife Amirtham. 3rd defendant is husband of 2nd defendant. The said Amirtham was died. One Chinna Ammal and Mannu gounder were father and mother of the 1st defendant, they begot one son by Subramania gounder(1st defendant) and a daughter by name Kamatchi, the said Kamatchi died about 45 years back without any issues. 5th item of the suit peroperty stands in the name 3rd defenadnt as evidenced by Ex.A1 Patta. The only son of said Mannu gounder i.e 1st defendant has been enjoyed the ancestral proeprties items 1 to 4, 6 to 11 of the suit properties alongwith the plaintiffs and 2nd defendant herein after the demise of his father, the patta for the 1 to 4 and 6 to 10 items of the suit properties jointly standing in the name of the 1st denfendant along with joint patta holders and subsequently the 1st defendant had purchased the item No.

12 of the suit property from one Kamatchi in his name under sale deed document No.1502/1975 registered in the office of the Sub Registrar, Kadalai as evidenced by Ex.A2. In such a circumstance, the 1st defendant had executed settlement deed infavour of 2nd defendant pertaining item No.11 of the schedule mentioned property on 13.12.2019 as evidenced by Ex.A4. Then, the 1st defendant had executed a sale deed pertaining to item No.12 of the schedule mentioned property infavour of the 3rd defendant on 22.07.2021 as evidenced by Ex.A3. The plaintiffs caused a notice to defendants through their advocate on 27.07.2022, calling upon them to effect division of the suit properties into 5 share and allot the plaintiffs 3 share thereon as evidenced by Ex.A5. The defendants 1 to 3 herein received the notice caused by the plaintiffs and have given a reply on 12.08.2022 as evidenced by Ex.A6.

8) The specific contention of the plaintiffs is that the properties shown as items 1 to 11 of the schedule are all the ancestral properties of the family. From out of the ancestral properties surplus income, one item of property (i.e item 12) was purchased by the 1st defendant. Hence, each member of the family is entitled the equal share over the above items of the properties. The only avocation of the 1st defendant is agriculture and he did not have any other avocation other than agriculture. Hence, item No.12 could not have been purchased by 1st defendant through his own income. Therefore, in the absence

of any rebuttal evidence, this court has no hesitation to hold that the above items 1 to 4 and 6 to 12 are ancestral properties of plaintiffs and 1st and 2nd defendants herein. Thus, the Ex.A3 Settlement deed and Ex.A4 Sale deed do not have any bearing on the right of plaintiffs over the item No.11 and 12 of the suit property.

9) So far as the item No.5 of the suit properties in S.F.No.162/11 is concerned, absolutely no document at all to show the title of either 1st defendant or the father of the 1st defendant herein. On contra, it stands in the name of the 3rd defendant herein. In such a circumstance, the claim of the plaintiffs over the item No.5 of the suit properties on the ground of ancestral in nature is not sustainable. Hence the claim of the partition over the 5th item of the suit properties is concerned, this court is not inclined to grant decree of partition as sought for. Hence, so far as the item No.5 of the suit property is concerned, the suit is dismissed for want of proof of title.

10) In the light of evidence of PW1 and Ex.A1 to Ex.A6 and in the absence of any rebuttal evidence, this Court has no hesitation to hold that the plaintiffs has proved its claim except item No.5 of the suit properties and hence, the plaintiffs are entitled to get $\frac{3}{5}$ share in item No.1 to 4 and 6 to 12 of the suit properties from the defendants as sought for and in so far as the item No.5 of the suit property is concerned, the suit is dismissed.

In fine, suit is partly decreed, the preliminary decree is passed with cost, the defendants are directed to divide the item No. 1 to 4 and 6 to 12 of the suit properties into 5 equal shares and to allot 3 such share to the plaintiffs and in so far as the item No.5 of the suit property is concerned, the suit is dismissed.

This Judgment is dictated by me to the Stenographer Grade II, typed by her directly in the computer, corrected and pronounced by me in open court this 07th day of October - 2023.

Sd/- P.Mathusuthanan
Principal District Judge,
Tiruvannamalai.

Witness examined on the side of Plaintiffs:

P.W.1- Tmt. Dhanakoti (1st plaintiff)

Documents marked on the side of the Plaintiffs:

Ex.A1	..	Computer patta for item 1 to 10 of the suit properties.
Ex.A2	24.09.1975	Copy of Sale deed executed by Kamatchi ammal infavour of 1st defendant
Ex.A3	13.12.2019	Copy of Settlement deed executed by 1st defendant infavour of 2nd defendant.
Ex.A4	22.07.2021	Copy of Sale deed executed by 1st defendant infavour of 3rd defendant
Ex.A5	27.07.2022	Copy of legal notice issued by the plaintiffs' counsel to the defendants.
Ex.A6	12.08.2022	Copy of Reply notice issued by the defendants' counsel to the plaintiffs' counsel.

Defendants side witnesses and exhibits: Nil.

Sd/- P.Mathusuthanan
PDJ.

Draft /Fair Judgment O.S.No.223 of 2022 Date: 07.10.2023
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