



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.07.2023

Pronounced on : 05.09.2023

CORAM

**THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MRS.JUSTICE R.KALAIMATHI**

**A.S.No.96 of 2019
and
C.M.P.No.3738 of 2019
and
Cross Objection No.46 of 2019**

A.S.No.96 of 2019

Sundaravadanam ... Appellant / 1st Defendant

Versus

1.Saroja Ammal
2.Vijaya
3.Suguna
4.Sivakami ... Plaintiffs / Respondents 1 to 4
5.Sekar
6.Thangathurai ... Defendants 2 & 3/Respondents 5 & 6

PRAYER in A.S.No.96 of 2019 : Appeal is filed under Section 96 of C.P.C., against the judgment and degree dated 20.09.2018 in O.S.No.104 of 2013 on the file of the Principal District Court, Villupuram.

For Appellant : Mrs.Hema Sampath,

1/22



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A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

Senior Counsel
for Mrs.R.Meenal

For Respondents : Mr.N.Suresh [R2 to R4]
For R1, R5 and R6 : No Appearance.

Cross Obj.No.46 of 2019 :

1.Saroja Ammal
2.Vijaya
3.Suguna
4.Sivakami ... Cross Objectors / Plaintiffs 1 to 4

Versus

1.Sundaravadanam
2.Sekar
3.Thangathurai ... Respondents / Defendants No.1 to 3

PRAYER in Cross Obj.No.46 of 2019 : Cross Objection is filed under Order 41 Rule 23 read with Rule 33 of Civil Procedure Code, against the findings of the learned Principal District Judge, Villupuram in para 20 of the Judgment in O.S.No.104 of 2013 dated 20.09.2018.

For Cross Objectors: Mr.N.Suresh

For 1st Respondent : Mrs.Hema Sampath,
Senior Counsel
for Mrs.R.Meenal

For R2 & R3 : No Appearance.

COMMON JUDGMENT



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

(Judgment was delivered by **R.KALAIMATHI, J.,**)

Aggrieved by the judgment and decree passed in O.S.No.104 of 2013 dated 20.09.2018 on the file of the Principal District Court, Villupuram, the eldest son of one Palanimalai Chettiar namely P.Sundaravadanam has preferred this appeal against the plaintiffs herein namely his mother (Tmt.Saroja Ammal) and three sisters (Tmt.Vijaya, Tmt.Suguna and Tmt.Sivakami) and his other two brothers Sekar and Thangathurai.

2. The wife and three daughters of Thiru.Palani Malai Chettiar have preferred cross objection vide Cross Obj.No.46 of 2019. In fact, they filed a suit for partition claiming 1/7 share each, for rendition of accounts and for mesne profits.

3. According to the plaintiffs, originally Palanimalai Chettiar, husband of the 1st plaintiff, the father of the plaintiffs 2 to 4 and defendants No.1 to 3 purchased the suit properties by way of registered sale deed dated 05.01.1981. He along with his children sold 0.07 cents of lands out of 0.58 cents and the remaining extent is shown as suit



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

property. Palanimalai Chettiar constructed 14 shops towards the

western and southern side of the suit property by borrowing loan from the State Bank of India, Manalurpettai Branch and let out for rents. Till his life time, he was remitting the loan by receiving rents. Thiru.Palanimalai Chettiar died intestate on 13.06.2008. The 1st and 3rd defendants are in possession and enjoyment of some of the shops by receiving the rents. The plaintiffs being class-1 legal heir of Thiru.Palanimalai Chettiar, have every right to claim 1/7 share each in the suit property. On oral demand and despite the legal notice issued to the defendants, as no steps towards effecting partition was taken, suit was laid for the relief of partition of 1/7 share for each plaintiff.

4. Contending contra, the 1st defendant Sundaravadanam contends that during his father's old age, as his father was not in a position to manage the affairs of family, his father along with the 1st defendant by obtaining loan of Rs.5,00,000/- from State Bank of India, Manalurpettai Branch and Rs.2,00,000/- from third persons had constructed 14 shops in the suit properties. He would further claim that the 3rd defendant Thangathurai for his family expenses for his business



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

purpose and to pay off his debts, demanded his share. On his demand, an extent of 4124 ½ sq.ft., of vacant plot situated at Angala Parameswari Amman Koil street was allotted to him and he sold it to one Ramesh S/o.Seethapathy Chettiar. As the purchaser demanded all the sharers to sign in the sale deed. He has also explained about the family transactions.

5. At trial, the 2nd plaintiff Tmt.Vijaya, the 3rd plaintiff Tmt.Suguna and one John Kennady have been examined as PW1 to PW3. Exs.A1 to A23 have been marked. On the side of defendants, appellant/1st defendant Sundaravadanam has been examined as DW1 and Exs.B1 to B17 have been marked.

6. Originally suit for partition was filed by the wife and 3 daughters of Palanimalai Chettiar for the relief of partition in O.S.No.104 of 2013 on the file of Principal District Court, Villupuram, by showing the properties of Palanimalai Chettiar inclusive of the sold properties and it was dismissed. Against which an appeal was preferred in A.S.No.396 of 2016 and it was disposed of by this Court on 15.09.2016, by directing the



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

plaintiffs to amend the suit schedule properties and directed the trial

Court to dispose of the suit in a time frame. Consequent upon the said judgment of this Court, after trial, suit was decreed, granting 1/7 share to each plaintiff.

7. The following issues were framed by the trial Court:

1. தாவா சொத்துக்களில் வாதிகளுக்கு தலா 1/7 பாகம் குறித்த முதல்நிலை தீர்ப்பாணை வாதிகளுக்கு கிடைக்கக்கூடா?

2. 1 ம் பிரதிவாதி வசூல் செய்த வாடகைக்கு உரிய கணக்குகளை ஒப்படைத்து அதிலும் வாதிகளுக்குரிய 4/7 பாகத்தை வாதிகளுக்கு பிரித்துக் கொடுக்க கடமைப்பட்டவரா?

3. வாதிகள் கோரியுள்ள மகசூல் நஷ்ட பரிகாரம் வாதிகளுக்கு கிடைக்கத்தக்கதா?

4. தாவா சொத்துக்கள் பொறுத்து 2000ம் வருடத்தில் பழனிமலை செட்டியார் மற்றும் 1 முதல் 3 பிரதிவாதிகளுக்கிடையே வாய்மொழி பாகம் ஏற்பட்டு பின்னர் ஒரு கூர்சீட்டு ஏற்படுத்திக்கொண்டதாக கூறும் பிரதிவாதி கூற்று உண்மையானதா?

6/22



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

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5. பழனிமலை செட்டியாரும் 1 முதல் 3 பிரதிவாதிகளும் வாய்மொழி

பாகப்பிரிவினை மூலம் கிடைத்த சொத்துக்களை அவரவர்கள் அனுபவித்து

வந்ததாக கூறும் கூற்று உண்மையானதா?

6. பழனிமலை செட்டியாரும் 1ம் பிரதிவாதியும் வங்கி மற்றும் 3ம்

நபர்களிடமிருந்து கடன் பெற்று தாவா சொத்துக்களில் உள்ள கடைகளை

கட்டியதாக கூறும் பிரதிவாதியின் கூற்று உண்மையானதா?

7. 1ம் பிரதிவாதி தாக்கல் செய்துள்ள எதிருரையில் குறிப்பிடப்பட்டுள்ள

கடன்கள் உண்மையானதா? அது வாதிகளை கட்டுபடுத்துமா?

8. இத்தாவா சரியாக மதிப்பீடு செய்யப்பட்டு நீதிமன்றக் கட்டணம்

செலுத்தப்பட்டுள்ளதா?

9. வாதிகளுக்கு கிடைக்க தக்க இதர பரிகாரங்கள் என்ன?

8. The learned Senior Counsel Tmt.Hema Sampath, appearing for the appellant would strenuously argue that the suit properties were originally owned by one Dhanam Ammal and they were purchased by Thiru.Palanimalai Chettiar through a registered sale deed dated 05.01.1981 and he obtained patta vide Patta No.399 and had been in

7/22



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

possession and enjoyment of the suit property. There was an oral partition. Thiru.Palanimalai Chettiar and his sons defendants 1 to 3 herein had partitioned through koorchit in the year 2000.

9. It is her argument that in the oral partition, the properties allotted to Palanimalai Chettiar are as follows:

- i) S.No.64/4 0.39 cents
- ii) S.No.69/5 0.35 cents
- iii) S.No.70/1 0.07 cents out of 0.58 cents.

10. The Properties allotted to 1st defendant P.Sundaravadanam in Siddhapattinam Village, in Natham S.No.69, out of Acre 15.78 cents measuring 27 feet (east – west), 90 feet (north-south), with country tiled house measuring 27 X 30 feet. The properties allotted to the 2nd defendant – namely Sekar in Siddhapattinam Village in Natham S.No.69, out of Acre 15.78 cents, a vacant plot for an extent of 0.14 cents to the north of Mariamman Temple. The properties allotted to the 3rd defendant namely P.Thangathurai in dry S.No.70/1, out of 0.58 cents, a vacant plot measuring 31 feet (east-west) X 132 feet (north-south).



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

WEB COPY

11. It was further contended that Palanimalai Chettiar sold 0.07 cents out of 0.58 cents in order to repay the debt of 3rd defendant Thangathurai to one Elumalai. The 3rd defendant sold his share of vacant plot to one Sivakumar on 20.03.2000. Thereafter, on various dates, Palanimalai Chettiar sold vacant plots to various persons. In S.No.69/4 and S.No.69/5 in the plot measuring 0.11 cents, Palanimalai Chettiar along with the 1st defendant Sundaravadanam by obtaining a loan of Rs.5,00,000/- from State Bank of India, Manalurpettai Branch and by getting loan of Rs.2,00,000/- from third person, constructed 13 shops. Palanimalai Chettiar had been residing with his wife and Thangathurai(D3) as one family. Some of the shops were let out by Palanimalai Chettiar by receiving advance amounts and rents. It was further claimed that after the death of Palanimalai Chettiar, till the month of December 2009, the 3rd defendant Thangathurai has also let out some of the shops and he had been receiving advance and rent. She would stress upon the fact that it was only the 1st defendant namely the appellant herein administering some of the suit properties and hence prayed for dismissal of the suit.

9/22



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

WEB COPY

12. Per contra, the learned counsel appearing for the respondents 2 to 4 (3 daughters) of Palanimalai Chettiar, Thiru.N.Suresh would vehemently contend that their father purchased the suit property by way of sale deed dated 05.01.1981 from one Dhanam Ammal vagaiyara. He had disposed off 0.07 cents to a third person, the remaining extent is shown as suit property. It is the further case of the above said respondents that on the west and south side of the suit property, 14 shops were constructed and named as Kamadhenu Complex and let out for rent by Palanimalai Chettiar by obtaining loan from State Bank of India, Manalurpettai Branch, and he was receiving the rents and repaying the debt till his death(13.06.2008). It is his further argument that the rear side shop No.11 was demolished and in the rear side of shop Nos.10 and 11, a godown measuring 60 X 30 feet has been constructed by spending an amount of Rs.45,000/- by the 1st defendant. It was further contended that among 7 shops which are situate at the southern side and 3 shops situate at the eastern side, the 1st plaintiff has been living there and let out 3 Shops for a rent of Rs.1,000/- for each shop and has been eking her livelihood. All the remaining 8 shops and the godown

10/22



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

are let out by the 1st defendant and he receives Rs.12,000/- as rent every month. But, it was further claimed that the 1st defendant does not repay the loan which was availed for the construction of shops and debt amount to the tune of Rs.7,00,000/- remains to be paid. As the plaintiffs demanded for partition despite the issuance of notice to the defendant as the properties were not partitioned, suit was filed by mother and the three daughters.

13. With regard to Exs.B7 to B10 pronotes as no creditor was examined by the 1st defendant they cannot be considered as true documents. The learned counsel would further submit that as the 1st defendant has been receiving rent from 10 shops, he alone is liable to repay the loan which was obtained from State bank of India, Manalurpettai Branch to the tune of Rs.14,000/-.

14. 1st plaintiff, Tmt.Saroja Ammal is the wife of Palanimalai Chettiar. The plaintiffs 2 to 4 and the defendants 1 to 3 are the children of Palanimalai Chettiar. The suit properties are situate in 1)
Siddhapattinam Village, Manalurpettai sub-division in New S.No.177/1, to

11/22



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

an extent of 1600 sq.metre and 2) in New S.No.177/2 to an extent of 1400 sq.metre, totally measuring about 3000 sq.metres of plot and 14 shops were constructed thereon along with godown and house roofed with cement sheets with electricity connection at Door Nos.268, 268/1 to 11.

15. Heard the arguments of learned Senior Counsel Tmt.Hema Sampath appearing for the appellant and Mr.N.Suresh, learned counsel appearing for the respondents 2 to 4 and perused the materials available on record.

16. Based on the aforesaid submissions made by both sides, the following points arise for consideration:

i) Whether the trial Court was incorrect in granting 1/7 shares each to the plaintiffs.

ii) Has 3rd defendant Thangathurai to be excluded from granting any share in view of the sale by the 3rd defendant, after the death of his father, the undivided property of their father situate in Siddhapattinam Village - a vacant plot situate in Angala Parameswari Amman Koil street

12/22



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

in S.No.69/5 out of 0.35 cents to an extent of 4124 ½ sq.ft., to one

Ramesh,

Points No.1 and 2:

17. The suit was laid by the wife and three daughters of Palanimalai Chettiar for the relief of partition of 1/7 share to each plaintiff against her three sons. There are two items shown in the suit properties.

Schedule of property details are as follows:

சொத்துவிபரம்

1) விழுப்புரம் ரி.டி., மணலுர்பேட்டை சப்.டி., சித்தப்பட்டினம் கிராமம், புஞ்சை சர்வே எண்.69/4—0.16.0 ஏர்சிற்கு புது நத்தம் சர்வே எண்.177/1 — 1600 ச.மீட்டரில் பழனிமலை செட்டியார் கிரையம் கொடுத்த மனைகளுக்கும் திருவண்ணாமலை ரோடிற்கும் கிழக்கு, பழனிமலைச் செட்டியார் கிரையம் கொடுத்த மனைகளுக்கும் பெருமாள் கோயில் தெருவிற்கும் தெற்கு, கீழ்க்கண்ட 2 வது அயிட்டத்திற்கும் மேற்கு, அங்காளபரமேஸ்வரி வீதிக்கும் வடக்கு, இதன் மத்தியில் 1326 ச.மீட்டர் மனை.

2) விழுப்புரம் ரி.டி. மணலுர்பேட்டை சப்.டி., சித்தப்பட்டினம் கிராமம், புஞ்சை சர்வே எண்.69/5 — 0.14.0



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

ஏர்சிற்கு புது நத்தம் சர்வே எண்.177/2 — 1400 ச.மீட்டருக்கு

1 வது அயிட்டத்திற்கும் கிழக்கு, அங்காள பரமேஸ்வரி கோவில் வீதிக்கும் வடக்கு, ஏழுமலை மற்றும் ரமேஷ் கிரைய மனைக்கும் மேற்கு, பெருமாள் கோயில் வீதிக்கும், பரமசிவம் வீட்டிற்கும் தெற்கு, இதன் மத்தியில் 1016.82 ச.மீ. மனையும், மேற்படி இரண்டு அயிட்டங்களிலும் சேர்ந்து மேற்புறம் ரோட்டை ஒட்டி 7 கடைகளும், தென்புறம் 7 கடைகளும், ஆக 14 கடைகளும், வடபுறம் உள்ள 12, 13, 14 கடைகளின் பின்புறம் 30' X 20' அளவில் கட்டப்பட்டுள்ள குடோனும், ஆக இவைகள் ஆர்.சி.சி. மெத்தை கட்டிடங்களாகும் இதிலுள்ள மின் இணைப்புகளும், 1 வது கடைக்கு கீழ்புறம் தெ.வ.19, கி.மே.35 அளவில் கட்டியுள்ள சிமெண்ட் ஜீட் போட்ட வீடும், இதில் உள்ள மின் இணைப்பும், ஆக மொத்த மதிப்பு ரூ.63,00,000/- ஆகும்.

For easy understanding, the genealogy details of Thiru.Palanimalai

Chettiar is given hereunder:

Palanimalai Chettiar
(Died on 13.06.2008)

= Saroja Ammal
P-1/R-1

| | | | |
Vijaya Suguna Sivakami Sundara Sekar Thangadurai
14/22



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

WEB COPY

P2/R2 P3/R3 vadanam
P4/R4 D1/A D2/R5 D3/R6

18. The suit property was originally purchased by Palani Malai Chettiar from one Dhanam Ammal Vagaiyara in 1981 and he was in possession and enjoyment of the said property by obtaining patta in Patta No.399 is not in dispute. After disposing a portion of the property by all the family members, the suit property remains undivided. It is also evident that already an oral partition had taken place between Palanimalai Chettiar and his three sons namely Sundaravadanam, Sekar and Thangathurai. Palanimalai Chettiar died intestate on 13.06.2008. But, without any arrangements, the sons of Palanimalai Chettiar have dealt with the property. This is quite evident from the detailed evidence of PW1 Smt.Vijaya and PW2-Suguna and DW1 – Sundaravadanam. During the life time of Palanimalai Chettiar and thereafter also there were very many land and money transactions have been made in the family. PW1 Tmt.Vijaya though she was given in marriage in the year 1986, her evidence in toto gives a clear picture about the money transactions and land transactions that had taken place in the family.



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

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19. It is the case of the plaintiffs that during the life time of

Palanimalai Chettiar, he obtained loan for construction of shops in the suit property from State Bank of India, Manalurpettai Branch and an amount of Rs.7,00,000/- is due to the Bank. For which, the 1st defendant namely DW1 claimed that till the last breath of Palanimalai Chettiar, he was in possession and enjoyment of the shops by letting out the shops and was receiving the rents. After his death, a portion of suit property was converted as a house and it is being enjoyed by the 1st plaintiff Saroja Ammal and 3rd defendant Thangathurai. From the evidence of PW1, PW2 and DW1, it is evident that DW1 and his brother Thangathurai have been enjoying the suit properties. The 2nd defendant on receipt of summon neither appeared before the Trial Court nor chose to contest the suit and remains exparte. The 3rd defendant has submitted to decree before the trial Court.

20. On the side of the plaintiffs, Ex.A4 to A8 namely Pronotes which are said to have been repaid by the said Palanimalai Chettiar to his son namely Sundaravadanam and they have been marked as Exs.A5 to A8. Ex.A4 Pronote is a pronote executed by Palanimalai Chettiar in

16/22



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

favour of Tmt.Aadhilakshmi Ayyasamy and the other pronotes are

executed by Palanimalai Chettiar in favour of his 1st son Sundaravadanam. These pronotes have been filed by the plaintiffs' side contending that Palanimalai Chettiar obtained loan from his son Sundaravadanam and he himself repaid the said loan amounts. With regard to Ex.A4, the connected party was not examined. It is the evidence of PW1 Tmt.Vijaya that her father obtained loan from Siddhapattinam Ayyasamy Gounder on 17.03.2005 for the purpose of constructing the shops and he executed a pronote-Ex.A4 in favour of Smt.Aadhilakshmi Ayyasamy and it was repaid by him. On the contrary, DW1 states that the said amount along with the loan amount, he has repaid to the State Bank of India towards loan and the legal heirs are liable to pay the same. But, no counter claim is filed by the 1st defendant.

21. The appellant herein claims that after the death of Palanimalai Chettiar, the 3rd defendant Thangathurai demanded for partition and in S.No.69/5 out of 0.35 cents, which is their father's undivided property, he got vacant plot-measuring 4124 ½ sq.ft., and sold the same. He would

17/22



A.S.No.96 of 2019

and

Cross Obj.No.46 of 2019

further claim that Thangathurai has sold the property through Ex.B6, more than what he would get as a share in the suit properties, besides, instigated his sister Vijaya to file the suit again to get 1/7 share in the suit property by endorsing that he has no objection to decree the suit as prayed for by the plaintiffs. The said details were affirmed by PW1 during her cross-examination which is extracted hereunder:

"என் அப்பா இறந்த பிறகு தங்கதுரை சொத்தில் பாகம் பிரித்துக் கொடுக்க கேட்டார் என்றால் சரிதான். அதனால் ச.எண்.69/5 ல் 4124-1/2 சதுரடி இடம் தங்கதுரைக்கு கொடுக்கப்பட்டது என்றால் சரிதான். அந்த சொத்தை மணலுர்பேட்டையை சேர்ந்த சீத்தாபதி செட்டியார் குமாரர் ரமேஷ் என்பவருக்கு கிரையம் கொடுத்துவிட்டார் என்றால் சரிதான். அதை ரூ.17 லட்சத்திற்கு கிரையம் கொடுத்தார்களா என்றால் ஞாபகம் இல்லை. 13.10.2011ல் எங்கள் குடும்ப உறுப்பினர்கள் அனைவரும் சேர்ந்து ஒரு கிரையம் கொடுத்துள்ளோம் என்றால் சரிதான். அந்த கிரையப் பத்திரம் பி.வா.சா-ஆ6."

22. On a perusal of Ex.B6, it is discernible that it was executed by all the legal representatives of Palanimalai Chettiar. It reads that :

"பழனிமலை செட்டியார் உயிருடன் இருக்கும்போது 05-03-1981- ல், பத்திர எண்.639/81 நெம்பர்படி கிரையம் பெற்று அவர் ஜீவதிசைக்குப்பிறகு எங்களுக்கே உரிமையாகி எங்களில் 4 லக்கமிட்டவருக்கு வாய்மொழி பாகமாக



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

கிடைத்த சொத்தில் அனுபவித்து வரும் பகுதியாகிய
இதனடியிற்கண்ட சொத்தை.

கிரைய விவரம்: நாங்கள் நாளது தேதியில் தங்களிடம்
ரொக்கம் பெற்றுக்கொண்ட ரூ.3,50,000.00-க்கு சுத்த
விற்கிரையம் செய்து கொடுத்து அதன்பேரில் எங்களில் 4
லக்கமிட்டவரின் குடும்பார்த்த செலவிற்காகவும், வியாபார
செலவிற்காகவும், வெண்ணிலை கடன்களை பைசல்
செய்வதற்காகவும் எங்களில் 4 லக்கமிட்டவர் நாளது
தேதியில் தங்களிடம் ரொக்கம் பெற்றுக்கொண்ட
ரூ.3,50,000.00 இந்த ரூபாய் மூன்று லட்சத்து
ஐம்பதாயிரமும்...".

23. It is pellucid that already oral partition took place between
father and sons. After the death of Palanimalai Chettiar, the 3rd
defendant Thangathurai had got a plot to an extent of 4124 ½ sq.ft., in
S.No.69/5 - suit property and sold it through Ex.B6. Details of suit
properties as follows:

i) In New S.No.177/1 - Old S.No.69/4 -

Out of 0.16.0 ares - 1326 sq.metre = 14267.76 sq.ft.,

ii) In New S.No.177/2-Old S.No.69/5 -

Out of 0.14.0 ares – 1016.82 sq.metre = 10940.98 sq.ft.,

Total 2342.82 sq.metre = 25208.74 sq.ft.,



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

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Therefore, in view of execution of Ex.B6 sale deed that too after the death of Palanimalai Chettiar, the 3rd defendant Thangathurai is not entitled for partition of suit property at all.

24. Therefore, as the plaintiffs are the wife and daughters of Palanimalai Chettiar, each person is entitled 1/6th share in the suit properties. The 3rd defendant Thangathurai had the benefit of selling his share through Ex.B6 as early as on 13.10.2011 before 12 years.

25. Therefore, in all fairness, except 3rd defendant Thangathurai, it has to be divided into six shares. Based on the aforesaid discussions, we are of the considered opinion that the plaintiffs are entitled for each 1/6 share i.e., 4/6 share in the suit properties.

26. In the plaint, there is a prayer for 4/7 share in the rent collected by the 1st defendant and also for past and future mesne profits. As both the prayers are one and the same, the plaintiffs are entitled to lay a separate claim under Order 20 Rule 12 CPC.



A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

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27. In fine, this appeal stands partly allowed. The plaintiffs are entitled to 1/6th share each in the suit properties. The cross objection stands dismissed. Considering the relationship between parties, there is no order as to costs. Consequently, connected miscellaneous petition is closed.

[R.S.M., J.,] [R.K.M., J.,]
05.09.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
Speaking Order / Non-Speaking Order
ssn

To
The Principal District Court,
Villupuram.

R.SUBRAMANIAN, J.,
and
R.KALAIMATHI, J.,

ssn



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A.S.No.96 of 2019
and
Cross Obj.No.46 of 2019

Pre-delivery judgment in
A.S.No.96 of 2019
and
C.M.P.No.3738 of 2019
and
Cross Objection No.46 of 2019

05.09.2023