IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.01.2017

PRONOUNCED ON : 23.02.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CS.No.78 of 2001

1. C.V.Barani Kumar
2. C.V.Kasikumar .. appellants

v.

1. C.V.Sathya
2. C.V.Jothikumar
3. C.V.Ravikumar
4. Mrs.Sairabanu .. defendants

PRAYER : Civil suit is filed under Order VII Rule 1 of CPC and under Order IV Rule 1 of Original Side Rules r/w.Section 4 of the Partition Act :- (1)directing partition and separate possession of the plaint A and B schedule properties by metes and bounds and put the plaintiffs in separate possession of their 1/5th share each in plant schedule 'A' property and 6/25 share each in plaint schedule 'B' property.

(or)

In the alternative – either

(i)to allot the entire plaint 'A' schedule property to defendants 1 to 3 herein towards their total interest in plaint schedules 'A' and

'B' properties and allot the entire plaint schedule 'B' property to the plaintiffs herein and if in doing so, the value of plaint schedule 'A' property exceeds the total interest of the defendants 1 to 3 in plaint schedule 'A' and 'B' properties, then directing the defendants to pay the plaintiffs excess amount, bit on the other hand if the valie of plaint schedule 'B' property exceeds the total interest of the plaintiffs in plaint schedules 'A' and 'B' properties then, directing the plaintiffs to pay to the defendants 1 to 3 such excess amount.

(or)

(ii)to direct partition and separate possession of the plaint 'B' schedule property by metes and bounds and put the plaintiff in separate possession of their 6/25 share each thereof while directing the 4th defendant to convey by a registered sale deed, the 3/5th interest of the defendants 1 to 3 purchased by the plaintiffs for Rs.3,84,000/- (i.e., the sale consideration paid by the 4th defendant to defendants 1 to 3) and in such an event to direct the 4th defendant to pay to the plaintiffs a sum of Rs.2,00,000/- or such other amount to be fixed by this Court as per estimation of Engineer/Assessor appointed by Court towards damages caused to plaint “A” schedule property by the unauthorised demolition of portions of plaint “A” Schedule property or give credit to such amount against the sale consideration of Rs.3,84,000/- to be paid by the plaintiffs.

(2)directing defendants 1 to 3 pay to the plaintiffs 1 and 2 jointly and severally a sum of Rs.1,44,000/- towards past mesne profits for past 3years from the date of the plaint (worked backwards) at Rs.4,00,000/- per month in respect of plant "A" Schedule property or such other sum as may be fixed by this Court.

(3)Award future mesne profits from the date of the plaint till date of actual partition and handing over possession of plaintiffs share in plaint schedule properties.

(4)directing the defendants to pay jointly and severally to the plaintiffs the cost of the suit and

(5)grant such and further or other reliefs as this Court may deem fit and proper.

For appellants : Mr.I.Abrar Mohammed Abdullah.

For respondents : Mr.Adaikala Arockiaraj for D4.
D1 to D3 – Set exparte on 22.12.2004.

JUDGMENT

The civil suit is filed by the plaintiffs for partition and separate possession of the plaint 'A' and 'B' schedule properties by metes and bounds.

2. The plaintiffs and the defendants 2 & 3 are sons of C.S.Velayudam Chettiar and the 1st defendant is wife of

C.S.Velayudam Chettiar and mother of plaintiffs and defendants 2 and 3 and. C.S.Velayudam Chettiar died intestate on 17.01.1989 leaving behind the plaintiffs and the defendants 1 to 3 as his legal heirs.

3. The case of the plaintiffs is that their father purchased the plaint "A" schedule property bearing Door No.18, OS.No.238 & 315, RS.No.366 and 367 at Noor Veeraswamy Street, Nungambakkam, Chennai – 34 measuring to an extent of 2,200sq.ft with superstructure vide registered sale deed in Doc.No.1518 of 1969 dated 06.10.1969 out of his own earnings, savings and income. After the death of C.S.Velayutham Chettiar the property devolved on the plaintiffs and the defendants 1 to 3. The plaintiffs father was also in possession of one ancestral property in Door No.31, Spurtank Road, Chetpet, Chennai-31 morefully described in Schedule 'B' of the plaint, which was purchased by the grandfather of the plaintiffs and the defendants 2 and 3, vide Doc.No.432 of 1958 dated 19.02.1958, the father of the plaintiffs and the defendants 1 to 3 were living with the said property. Thereafter, except for a brief period the defendants 1 to 3 moved to plaint "A" schedule property as set out later and moved back to plaint "B" schedule property. The plaint "B" schedule property is also not partitioned between the plaintiffs and the defendants 1 to 3.

4. The plaintiffs further submit that plaint "B" schedule property being ancestral property, the plaintiffs and the defendants 2 and 3 are entitled to 6/25 shares each while 1st defendant is entitled to 1/25share. The entire area is almost completely built up in ground and first floor. Each floor is having two separate portions and total constructed area is about 3019.50sq.ft. The total area in occupation of plaintiffs is about 1,088.55sq.ft and the defendants 1 to 3 are in occupation of 1,1512sq.ft and the remaining 781.76sq.ft is used as common area. The present guideline value of Schedule "B" property is Rs.1,231/-per sq.ft and total value of 1638sq.ft comes to Rs.20,16,378/-. The value of the superstructure will be about Rs.8,50,000/-. The total value of "B" schedule property is Rs.28,66,378/-. The plaintiffs share value is Rs.13,75,861.44 (6/25 share each).

5. The plaintiffs states that during the lifetime of their father "A" schedule property was let out to tenants and the rents were collected by the father till his death on 17.01.1989. After his death, the defendants 1 to 3 were collecting the rents and appropriating the same among themselves. The plaintiffs further states that during 2nd week of March 1998, the plaintiffs came to know that the

defendants 1 to 3 were discreetly and without the knowledge and consent of the plaintiffs attempted to sell their undivided 3/5share in the schedule "A" mentioned property to third parties without any partition or separate possession. The plaintiffs effected paper publication on 20.03.1998 in Daily Thanthi giving warning against such sale and purchase by 3rd parties. Inspite of public notice the defendants 1 to 3 sold their undivided 3/5share in "A" schedule property clandestinely on 30.04.1998 to the 4th defendant by undervaluing the property for the sale consideration of Rs.3,84,000/-. The 4th defendant herein purchased the 3/5share of the undivided share in "A" schedule property with full knowledge of the publication and with ulterior motives.

6. The plaintiffs came to know about the illegal sale to the 4th defendant only when the 4th defendant taking shelter under the said illegal sale, trespassed into "A" schedule property and without any sanction or permission from the competent authority, started to demolish the building, keeping the outer wall intact to conceal the illegal action from the authorities. The 4th defendant ought to have filed a suit for partition and separate possession of the share sold to her subject to the right of preemption of the plaintiffs conferred under Section 4 of the Partition Act. The plaintiffs came to know the illegal activities from a letter received on 30.06.1998 from one

Loganathan apparently a well wisher living nearby, immediately the plaintiffs obtained an encumbrance certificate which reflects the name of the 4th defendant. Thereupon, the plaintiffs after verifying the facts and taking photographs complained about the illegal sale and demolition to all the concerned authorities. On such complaints the Corporation authorities stopped further demolition and the same was intimated to the plaintiffs. The plaint "A" schedule property is built up with an inner yard of about 100sq.ft open to sky and a narrow passage of about 4feet on the southern side with a ground and first floor and it is incapable of division into five equal shares. Both the ground and first floor had been let out by the plaintiffs father, during May 1995, the tenants occupied in the first floor vacated and the first defendant along with third defendant moved during June 1995 apparently with an ulterior motive and came back to "B" schedule property during October 1996. The ground floor in the "A" schedule property was vacated during December 1997 and vacant possession was handed over to the first defendant. After taking possession the defendants 1 to 3 in connivance with each other, purported to sell the property to 4th defendant and purported to sell their undivided 3/5th share in "A" Schedule property and inturn taking advantage of the sale trespassed into the property and started to demolish the property without jurisdiction. Such illegal demolition by the 4th defendant caused a loss to the tune of

Rs.2,00,000/- to the plaintiffs. The plaintiffs have sent a lawyer notice dated 17.03.1999 to that effect and the same was remained unanswered. If the “A” schedule property is let out it would have fetched atleast Rs.10,000/- per month, out of which the plaintiffs shares together would come to Rs.4,000/-p.m. and the defendants are bound to make good to the plaintiffs towards mesne profits for the past three years.

7. It is also submitted on the side of the plaintiffs that the defendants 1 to 3 offered the sale, the plaintiffs would have purchased the “A” schedule property for the same sale consideration. The plaintiffs have the right of preemption to purchase 3/5share under Section 4 of the Partition Act. The plaintiffs have also sent the legal notice dated 22.07.1998 stating that they are ready to purchase the undivided 3/5share in “A” schedule property and willing to pay a sum of Rs.4,00,000/- as against the sum of Rs.3,84,000/- shown as consideration paid by the 4th defendant. Further the guideline value of the “A” schedule property is Rs.20,02,000/- [Rs.920/-per sq.ft x 2200sq.ft = Rs.20,02,000/-] and the market value will be much more. The value of the superstructure is Rs.5,00,000/- in all the total value of the “A” schedule property is Rs.25,02,000/-. The value of the plaintiffs share at 1/5share each come to Rs.10,00,800/-. The total

value of both "A" and "B" schedule properties comes to Rs.53,68,378/- and the share of the plaintiffs in both the properties comes to Rs.23,76,661.44 at Rs.11,88,330.72 each.

8. The defendants 1 to 3 have not filed their written statement and they are set exparte by this Court on 22.12.2004.

9. The 4th defendant filed written statement stating that she purchased the 3/5undivided share in the "A" schedule property with full knowledge of publication. The defendants 1 to 3 sold only 3/5 of their share leaving behind the plaintiffs 2/5share. The property was properly valued as per the guideline value and the same was registered by paying sufficient stamp duty for the sale consideration of Rs.3,84,000/-. The 4th defendant has not demolished any portion of the building and she is not entitled to pay any damages to the plaintiffs. If at all, if there is any dispute between the plaintiffs and the defendants 1 to 3, the 4th defendant herein has nothing to do with the same and the 4th defendant has purchased only 3/5share of the defendants 1 to 3 in the "A" schedule property.

10. The 4th defendant further states that the plaintiffs are well aware of the fact that the 4th defendant is going to purchase 3/5 share of the defendants 1 to 3 and the plaintiffs never made any

objection at the time of registration. It is also to be noted in the sale deed the address of the defendants 1 to 3 is given as No.31, Spurtank Road, Chetpet, Chennai which is the "B" schedule property where the plaintiffs and the defendants 1 to 3 are residing at the time of registration of the sale deed. As stated by the plaintiffs that the illegal activities in the "A" schedule property by the 4th defendant through the well wisher living nearby is not acceptable one. The plaintiffs in order to defeat the sale in favour of the 4th defendant and with malafide intention filed the present suit and the question of preemption does not arise in the present case. The 4th defendant submits that she has nothing to say anything about the partition as well as mesne profit between the plaintiffs and the defendants 1 to 3 and prays to dismiss the suit against her in liminie and states that the alternative prayer is not maintainable at this stage.

11. Based on the pleadings of the parties to the suit as well as the draft issues submitted by them, the following issues have been framed by this Court on 19.03.1994 :-

1. Whether the plaintiffs are entitled to 1/5th share each in plaint "A" schedule property and 6/25th share in plaint "B" schedule property?
2. Whether the purchase of schedule "A"

property is valid?

3. Whether the 4th defendant is entitled to claim 3/5th share in the "A" schedule property as purchaser of the undivided shares from the defendants 1 to 3?
4. Whether the alternative relief claimed by the plaintiff is legally sustainable?
5. Whether the plaintiffs are entitled to mesne profits from the defendants 1 to 3 as claimed in the plaint?
6. Whether the plaintiffs are entitled to mesne profits for their share from the defendants 1 to 3?
7. To what relief the parties are entitled?

12 .Before the Additional Master – II, the first plaintiff was examined himself as PW1 and marked Exs.P1 to P25 on the side of the plaintiffs and the 4th defendant was examined as DW1 and marked Exs.D1 and D2 on the side of the 4th defendant.

13. Heard the rival submissions made on both sides.

14. The learned counsel for the plaintiffs would contend that

father of the plaintiffs C.S.Velayudham Chettiar purchased the "A" schedule property under the sale deed dated 06.10.1969 vide Doc.No.1518 of 1969. C.S.Velayudham Chettiar died intestate on 17.01.1989 leaving behind his wife and four sons viz., plaintiffs and defendants 2 and 3 and the legal heirs are entitled to 1/5th share each in the "A" schedule property.

15. With regard to "B" schedule property the same was purchased by C.S.Saravanan Chettiar father of C.S.Velayutham Chettiar vide Doc.No.432 of 1958 dated 19.02.1958. During the lifetime of C.S.Velayutham Chettiar, he lived in the "B" schedule property alongwith the plaintiffs and the defendants 1 to 3. The defendants 1 to 3 moved to "A" schedule property for brief period of time and returned to "B" schedule property. Both the suit schedule properties are not partitioned among the parties and they are living together in separate portion of the properties.

16. The plaintiffs claim 6/25th share each in "B" schedule property and the defendants 2 and 3 are entitled to 6/25th share each and the first defendant is entitled to 1/25th share by treating the property as an ancestral property.

17. The learned counsel for the fourth defendant would submit

that as admitted by the plaintiffs, they along with the defendants 1 to 3 are entitled to 1/5th share each in the "A" schedule property after the death of C.S.Velayutham Chettiar on 17.01.1989. Out of the legal necessity, the defendants 1 to 3 conveyed their undivided 3/5th share in the "A" schedule property to and in favour of the 4th defendant for valid sale consideration vide Doc.No.261 of 1998 dated 30.04.1998 on the file of the Sub Registrar, Thousand Lights through original of Ex.P6/Ex.D2, from the date of purchase, the 4th defendant is in possession and enjoyment of the said property. Subsequent to the sale, the fourth defendant is entitled to 3/5th share and the plaintiffs herein are entitled to 2/5th share in the "A" schedule property. The said proposition is being accepted by the plaintiffs in their pleadings itself and the plaintiffs prayed for passing preliminary decree declaring the share of the plaintiffs as well as the defendants 1 to 3 as each of them is entitled to 1/5th share. Furthermore, the 4th defendant purchased 3/5share for the valuable sale consideration, inequity and in the absence of any objections from the other share holders/plaintiffs, the shares of the defendants 1 to 3 may be allotted to the fourth defendant while passing preliminary decree so as to enable the respective parties to work out their remedy in the final decree proceedings.

18. Insofar as "B" schedule property is concerned, the same

was purchased by C.S.Saravanan Chettiar on 19.02.1958, after the Hindu Succession Act, 1956 came into force. After the death of C.S.Saravanan Chettiar, as per the provisions of Section 8 of the Act the property devolve on his legal heirs. Section 8 of the said Act proceeds as follows :-

> "General Rules of Succession in the case of males :
>
> The property of a male Hindu dying intestate shall devolve according to the provisions of this Chapter :-
>
> (a) First, upon the heirs, being the relatives specified in class I of the Schedule."

19. It is pertinent herein to refer Section 4 of the Hindu Succession Act, 1956, which is extracted hereunder :-

> "Overriding effect of Act : (1) Save as otherwise expressly provided in this Act :-
>
> (a)Any text, rule or interpretation of Hindu Law or any Custom or usage as part of that law in force immediately before the commencement of this Act shall cease to have effect with respect to any matter for which provision is made in this Act;
>
> (b)Any other law in force immediately before the commencement of this Act shall cease to apply to Hindus in so far as it is inconsistent with any of the provisions contained

in this Act;

20. On combined reading of both the provisions would disclose that after the death of C.S.Saravanan Chettiar his son C.S.Velayautham Chettiar has become absolute owner of the "B" schedule property. As per the provisions, C.S.Velayutham Chettiar succeeded the property as absolute owner and after his death on 17.01.1989, his legal heirs viz.,the plaintiffs and the defendants 1 to 3 succeeded the property and each of them is entitled for 1/5th share in the "B" schedule property.

21. Considered the pleadings of both sides and the issues framed by this Court and the oral and documentary evidences adduced and produced by the respective parties during the course of trial.

Issue Nos.1 to 3

22. In order to prove the case of the plaintiffs, the first plaintiff was examined as PW1. The sale deed dated 19.02.1958 in favour of C.S.Saravana Chettiar is marked as Ex.P1. The sale deed dated 24.10.1969 in favour of C.S.Velayudham Chettiar is marked as Ex.P2. Public notice dated 20.03.1998 is marked as Ex.P3. Copy of the letter sent by the counsel for the plaintiff to the Joint

Registrar dated 25.03.1998 is marked as Ex.P4. Reply from the Sub Registrar, Chennai dated 20.04.1998 is marked as Ex.P5. Sale deed in favour of the 4th defendant dated 30.04.1998 is marked as Ex.P6. Letter dated 20.07.1998 from the plaintiffs to the defendants 1 to 3 is marked as Ex.P7. Encumbrance certificate dated 21.07.1998 issued by the Joint Sub Registrar in respect of "A" schedule property is marked as Ex.P8. Photocopy of the death certificate of Velayutham Chettiar dated 05.08.1998 is marked as Ex.P9. Photocopy of the caveat filed by the 4th defendant dated 06.08.1998 is marked as Ex.P10. Photocopy of the legal heir certificate dated 04.09.1998 is marked as Ex.P11. Photocopy of the complaint dated 05.10.1998 is marked as Ex.P12. Complaint dated 06.10.1998 is marked as Ex.P13. Copy of the complaint by the Plaintiffs to the Assistant Engineer, TNEB, Nungambakkam, Chennai dated 06.10.1998 is marked as Ex.P14. Copy of the complaint given by the plaintiffs to the Assistant Engineer, Metro Water, Nungambakkam, Chennai dated 09.10.1998 is marked as Ex.P15. Copy of the complaint addressed to IG of Registration, Santhome street, Chennai dated 09.10.1998 is marked as Ex.P16. Copy of the complaint addressed to Revenue Officer, Corporation Chennai, Lake Area, Nungambakkam, Chennai-34 is marked as Ex.P17. Copy of the complaint given by the plaintiffs to the Commissioner of Income Tax, Nungambakkam High Road, Chennai dated 14.10.1998 is marked as Ex.P18. Reply from the Assistant Commissioner, Corporation of Chennai dated 12.01.1998 is marked as Ex.P19. Copy of the letter from the plaintiffs to the Additional Special Deputy Collector (stamps), Chennai dated 03.03.1999 is marked as Ex.P20. Photocopy of the letter sent by the plaintiffs to the Tahsildar, Egmore, Nungambakkam Taluk, Chetpet, Chennai dated 23.02.1999 is marked as Ex.P21. Rough sketch and plan in respect of suit schedule "A" and "B" properties are marked as Ex.P22. Photographs (3 Nos.) of the suit property are marked as Ex.P23. Photographs (11 Nos.) after demolishing the suit property are marked as Ex.P24. Photocopyof the letter addressed to Tahsildar, Chetpet Egmore for legal heir certificate alongwith the acknowledgment issued by the Tahsildar dated 12.04.1998 is marked as Ex.P25.

23. The 4th defendant purchaser of the 3/5 undivided share in the "A" schedule property from the defendants 1 to 3 is examined as DW1, in order to prove her case she marked two documents (i)authorisation letter dated 16.07.2012 is marked as Ex.D1 and (ii)Certificate copy of the sale deed in favour of 4th defendant dated 30.04.1998 is marked as Ex.D2.

24. It is not in dispute that the suit "A" schedule property purchased in the name of the father of the plaintiffs C.S.Velayudam

Chettiar under registered sale deed dated 06.10.1969 in Doc.No.1518 of 1969 and the said C.S.Velayutham Chettiar died intestate on 17.01.1989, leaving behind his surviving wife and four sons/plaintiffs and defendants 2 and 3. During the lifetime of Velayutham Chettiar, the plaintiffs and the defendants 1 to 3 are living together. After the death of Velayutham Chettiar, the legal heirs are equally entitled to 1/5th share each in the property, for which the defendants 1 to 3 has not chosen to appear before this Court and to file written statement and not made objections. The fourth defendant filed written statement and paid Court fees for her share and the copy of the sale deed in favour of the fourth defendant executed by the defendants 1 to 3 is marked as Ex.P6 on the side of the plaintiff and Ex.D2 on the side of the fourth defendant. It shows the property is self acquired property of Velayautham Chettiar and the plaintiffs and the defendants 1 to 3 are entitled to 1/5th share and the fourth defendant purchased only undivided share of 3/5share. The defendants 1 to 3 has not filed any written statement and not entered into witness box. Under such circumstances, the plaintiffs are entitled to 1/5th share each in the suit "A" schedule property as prayed for.

25. The parties to the suit is having another house in the suit "B" schedule property which is purchased by the

grandfather/Saravana Chettiar of the plaintiffs and defendants 2 and 3 under sale deed dated 19.02.1958. After the death of Saravana Chettiar, the plaintiffs father succeeded and enjoyed the property. According to the plaintiffs, after the death of Velayutham Chettiar the plaintiffs and the defendants 2 and 3 are entitled to 1/5share each and from 1/5share of his father, plaintiffs and the defendants 2 and 3 are entitled to 1/25share each and the first defendant is entitled to 1/25share. Therefore, plaintiffs are entitled to 6/25 share each.

26. The learned counsel for the fourth defendant contended that during the lifetime of C.S.Velayutham Chettiar his father Saravanan Chettiar died, the entire property devolved on the Velayutham Chettiar, during his lifetime the plaintiffs and the defendants 1 to 3 are not entitled to any share, after the death of Velayutham Chettiar the plaintiffs and the defendants 1 to 3 are entitled to 1/5share each in the "A" schedule property, the claim of the plaintiffs is that they are entitled to 6/25share each and first defendant is entitled to 1/25 is not correct. Since, the succession opens only after the death of the Velayutham Chettiar. Even though, the defendants 1 to 3 have not filed any written statement and contested the suit, the legal position does not change.

27. Considered the rival submissions made on either side and the oral and documentary evidences adduced and produced by both sides.

28. It is admitted that "A" schedule property is self acquired property of the Velayutham Chettiar and he died intestate on 17.01.1989. As per Hindu Succession Act, the plaintiff and the defendants 1 to 3 are entitled to 1/5share each. Before institution of the suit, the defendants 1 to 3 sold their undivided 3/5 share to the 4th defendant and the plaintiffs are entitled to only 2/5 share. The defendants have not sold the share of the plaintiffs, even otherwise the sale will not bind on the plaintiffs in respect of their shares. The defendants 1 to 3 have not sold the entire property, they sold only their respective share. In this case, the plaintiffs and the defendants 1 to 3 are legal heirs of the deceased Velayutham Chettiar and they are entitled to 1/5share each in the "A" schedule property. Insofar as "B" schedule property is concerned the father of the Velayutham died intestate, after the death of Saravanan Chettiar, the entire property devolved on the Velayutham Chettiar, he enjoyed the property and he also died intestate, after his death, the plaintiffs and the defendants 2 and 3 are entitled to 1/5th share

i.e., each entitled to 5/25, remaining 5/25 share of their father would go to plaintiffs and defendants. Therefore, they are entitled to 1/25share each from 5/25 share of the Velayutham Chettiar. The defendants have not filed any written statement and objected the same at any point of time and they have also not entered into witness box and denied the claim of the plaintiffs. The issue No.1 is answered accordingly.

29. As already stated, it is admitted fact that "A" schedule property was purchased by Velayutham Chettiar and he died intestate on 17.01.1989 leaving behind the plaintiffs and the defendants 1 to 3 as his legal heirs, they are entitled to each 1/5share in the "A" schedule property. Since, the defendants 1 to 3 sold their undivided share of 3/5 to the 4th defendant. The action of 4th defendant in purchasing 3/5 undivided share in the "A" schedule property for a valid sale consideration from the defendants 1 to 3 in Ex.P6 is valid. The issue No.2 is answered accordingly.

30. Before filing of the suit by the plaintiffs, the 4th defendant purchased 3/5 undivided share from the defendants 1 to 3 in the "A" schedule property, during the course of trial the 4th defendant filed written statement and filed a memo alongwith the Court fees for paid a sum of Rs.1,000/- towards her share in the "A" schedule

property. Therefore, the 4th defendant is also entitled to 3/5share of the defendants 1 to 3 in the "A" schedule property. Hence, the issue No.3 is answered accordingly.

Issue Nos.5 and 6

31. The plaintiffs admitted that the defendants 1 to 3 have sold their undivided share to the 4th defendant and the 4th defendant is in possession and enjoyment of 3/5share in the property. Subsequently, it is stated that they have taken possession from the erstwhile tenants in the "A" Schedule property. Further, the plaintiffs have stated that if the "A" schedule property is let out it would have fetched at Rs.10,000/-p.m. out of which the plaintiffs are entitled to Rs.4,000/-, for which the plaintiffs have not produced any document to prove the same. The defendants 1 to 3 have also not filed their written statement before this Court and not entered into the witness box and denied the claim of the plaintiffs. There is no specific proof or evidence in this regard as to how much the defendants 1 to 3 have received the income from the "A" schedule property by way of rent. The provision relating to mesne profit does not apply to a suit for partition of joint property. Therefore, the plaintiffs are not entitled to any mesne profits. However, the plaintiffs are entitled to file a suit for recovery of mesne profit after the decree for partition. Hence, the issue No.5 and 6 are answered

accordingly.

Issue No.4.

32. With regard to issue of claiming alternative relief in the same suit is concerned, the same shall be worked out in the final decree proceedings. Hence, the issue No.4 is also answered accordingly.

Issue No.7

33. The plaintiffs are entitled to 1/5share each in "A" schedule property and 6/25 share each in "B" schedule property. The 4th defendant is also entitled to 3/5share in the "A" schedule property. The plaintiffs are at liberty to take separate suit for mesne profits.

34. In the result, the preliminary decree is passed to the effect that the plaintiffs are entitled to 1/5 share each in schedule "A" and 6/25 share in "B" schedule properties. The 4th defendant is entitled to 3/5share in the "A" schedule property. As far as alternative relief is concerned, the same shall be worked out in the final decree proceedings. No costs.

23.02.2018.

Index : Yes/No
Internet : Yes/No
tsh

List of Witness examined on the side of the plaintiffs

C.V.Barani Kumar - PW1

List of documents marked on the side of the plaintiffs

S. No.	Exhibits	Date	Description of the documents
1	P-1	19.02.1958	Sale deed in favour of C.S.Saravanan Chettiar
2	P-2	24.10.1969	Registered sale deed in favour of C.S.Velayutham Chettiar
3	P-3	20.03.1998	Public notice in Daily Thanthi
4	P-4	25.03.1998	Copy of the letter sent by the counsel for the plaintiff to the Joint Registrar
5	P-5	20.04.1998	Reply from the Sub Registrar, Chennai
6	P-6	30.04.1998	Sale deed in favour of the 4th defendant
7	P-7	20.07.1998	Letter from the plaintiffs to the defendants 1 to 3
8	P-8	21.07.1998	Encumbrance certificate issued by the Joint Sub Registrar in respect of "A" schedule property
9	P-9	05.08.1998	Photocopy of the death certificate of Velayutham Chettiar
10	P-10	06.08.1998	Photocopy of the Caveat filed by the 4th defendant
11	P-11	04.09.1998	Photocopy of legal heirship certificate
12	P-12	05.10.1998	Photocopy of the complaint
13	P-13	06.10.1998	The complaint
14	P-14	06.10.1998	Office copy of the complaint by the plaintiff to the Assistant Engineer, TNEB, Nungambakkam Chennai
15	P-15	09.10.1998	Office copy of the complaint given by the plaintiff to the Assistant Engineer, Metro Water, Nungambakkam Chennai
16	P-16	09.10.1998	Copy of the complaint addressed to IG of Registration, Santhome Street, Chennai

S. No.	***Exhibits***	***Date***	***Description of the documents***
17	P-17	09.10.1998	Office copy of the complaint addressed to Revenue Officer, Corporation of Chennai, Lake Area, Nungambakkam, Chennai-34
18	P-18	14.10.1998	Office copy of the complaint given by the plaintiff to the Chief Commissioner of Income Tax, Nungambakkam High Road, Chennai
19	P-19	12.01.1998	Reply from the Assistant Commissioner, Corporation of Chennai
20	P-20	03.03.1999	Office copy of the letter from the plaintiff to the Additional Special Deputy Collector (Stamps), Chennai
21	P-21	23.03.1999	Photocopy of the letter sent by the plaintiff to the Tahsildar, Egmore, Nungambakkam Taluk, Chetpet, Chennai.
22	P-22	-	Rough sketch and plan in respect of suit schedule A and B properties
23	P-23	-	Photographs (3 Nos.) of the suit property
24	P-24	-	Photographs (11 Nos.) after demolishing the suit property
25	P-25	12.04.1998	Photocopy of the letter addressed to Tahsildar, Chetpet, Egmore for legal heir certificate along with the acknowledgment issued by the Tahsildar.

<u>List of Witness examined on the side of the 4th defendant</u>

M.Fazalur Rahman - DW1

List of documents marked on the side of the 4th defendant

S. No.	*Exhibits*	*Date*	*Description of the documents*
1	D-1	16.07.2012	Original authorisation letter
2	D-2	30.04.1998	Certificate copy of the sale deed in favour of the 4th defendant

23.02.2018.

(P.V.J.)

P.VELMURUGAN, J.

tsh

Pre Delivery Judgment in

CS.No.78 of 2001

23.02.2018.