

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2017

PRONOUNCED ON : 08.07.2019

CORAM :

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

CS.No.93 of 1999

1. V.Muthukrishnan
2. V.Govindaswamy
3. V.Sathanandam (deceased)
4. Emorse
5. S.Ravikumar
6. S.Dinakaram
7. S.Sangeetha

plaintiffs 4 to 7 are brought on record as the legal heirs of the deceased 3rd plaintiff vide A.No.1657 of 2014 dated 10.03.2014.

.. plaintiffs

V.

1. V.Adhikesavalu
2. K.Mariammal
3. Jothi (died)
4. E.Sulochana
5. Dhanalakshmi
6. V.Kothandam

4th defendant transferred as 6th defendant as per order in A.No.5257 of 2002 dated 13.02.2003.

7. Rajasekaran
8. Bhuvaneswari
9. Saravanan
10. Kanjana
11. Sundari

defendants 7 to 11 are legal heirs of the deceased 3rd defendant in A.No.1338 of 2011 dated 13.03.2013 and time extended as per order dated 28.06.2013 in A.No.2631 of 2013.

.. defendants

PRAYER : Civil suit is filed under Order XXIV Rule 5 and Order IV Rule 1 of the OS Rule and Order VII Rule 1 of CPC :-

(a) Directing partition of the suit properties by metes and bounds into 8 shares and allocate one share to each 1 and 2 plaintiffs, one share to 4 to 7 plaintiffs jointly and the defendants, one share to 6th defendant and jointly one share to defendants 7 to 11 in respect of the property which is morefully described in the schedule hereunder. (amended as per the order dated 07.04.2014 in A.No.23222 of 2014) (amended as per the order dated 22.07.2014 in A.No.4503)

(b) To appoint an Advocate Commissioner to divide the suit property by metes and bounds and put the plaintiffs in possession of their respective shares.

(c) For declaration declaring the alleged sale deed in favour of 5th defendant in document No.412 of 1974 dated 20.03.1974 as sham and nominal and not binding on the plaintiffs.

(d) Directing the 1st defendant to pay future mesne from the date of plaint till the date of decree at Rs.10,000/- per month towards the plaintiffs share.

(e) For a permanent injunction restraining the defendants, their men, agents, servants or any one claiming through or under them from in any manner disturbing the peaceful possession and enjoyment of the plaintiff and his tenants in respect of the suit properties set forth in the schedule hereunder till the disposal of the suit.

(f) Directing the defendants to pay the costs of the suit.

For Plaintiffs : M/s.K.Mohana Murali.

For Defendants : M/s.C.S.Selvatharasu

J U D G M E N T

The civil suit is filed by the plaintiffs for partition and Declaration.

2. The plaintiffs and defendants are the legal heirs of late Veerasamy who died in the year 1960 leaving behind the plaintiffs, the defendants and his wife Smt.Senganiammal who died in the year 1983.

3. The plaintiffs submits that their father Late Veerasamy out of his own funds purchased agricultural lands at No.288, Thiruvandar village, Uthiramerur Taluk, Chengalpet District to an extent of 2.68 cents in S.No.166/1, 0.49cents in S.No.181/3, 0.40cents in S.No.190/2, 0.68 cents in S.No.182/7. Ever since the life time of plaintiffs parents, the plaintiffs and the defendants were residing at No.83, Old No.96-C, Habibullah Road, T.Nagar, Chennai-17. The land owner proceeded against the defendants and the plaintiffs for ejecting them from the said property. The plaintiffs and the defendants jointly decided to sell the property in the native at Chengalpet District with a sole intention to purchase the property at T.Nagar. The property at Thiruvandar Village, Uthiramerur Taluk, Chengalpat District was sold to Krishnamurthy and T.D.Sivaraman vide Document Nos.2222 and 2223 of 1971 dated 23.08.1971. Out

of the sale proceeds the property at T.Nagar was advanced and later on purchased. While purchasing the property at T.Nagar it was only a hut house, later on the plaintiffs and defendants jointly put up superstructure in the said property. At the time of putting up construction there was a panchayat between the parties with regard to partition of the property. The issue was amicably settled between the parties and the plaintiffs executed a General Power of Attorney in favour of the 1st defendant for doing certain acts and deeds with regard to the property at T.Nagar. As requested by the 1st defendant, the plaintiffs signed the power of attorney deed produced by the 1st defendant, till date the plaintiffs were not aware what was the contents in the said instrument. After construction of the said property in the year 1991, the 1st defendant let out the property to various tenants and collected the rents and periodically paid the rental incomes to the plaintiffs. Further, the movable belongings like jewels, furnitures are still lying in the suit property and they have every right to access the suit property.

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4. The plaintiff are under bonafide belief that the 1st defendant will act as Kartha of the joint family coupled with power of attorney to manage the said property. But, the activity of the 1st defendant became strange during June 1996 by refusing to pay the rental incomes derived from the said property. When the plaintiffs

approached the defendants for legal partition together with all the legal heirs, but the 1st defendant adamantly denied the legal partition of the legal heirs. The defendants 2 to 4 always acted as a puppet under the first defendant. In the meanwhile, the first defendant deliberately caused a notice dated 16.07.1998 through the second defendant, for creating records and for wrongful submission. It is learnt, that the second defendant said to have executed a release deed in favour of the 1st defendant after receiving plaintiffs share, the defendants joined together and plotting to defeat and defraud the plaintiffs share in the said property. The rental income apart from the portion occupied by the 1st defendant worked out to Rs.10,000/-p.m. The plaintiffs have also decided to claim the arrears which was deliberately swindled by the first defendant for the period commencing from July 1996 to till the date of filing of the suit which works out to Rs.1,45,000/-. The plaintiffs jointly caused a lawyers notice dated 12.09.1998 to the defendant seeking partition of the suit property. The first defendant sent false, frivolous and vexatious reply on 12.10.1998 stating that the suit property stands in the name of the 5th defendant, the said sale is sham and nominal and not binding on the plaintiffs. The plaintiffs came to knowledge about the sale only from the reply notice dated 12.10.1998. Hence, the plaintiff filed the present suit for the relief as prayed for.

5. The defendants 1 and 5 filed the written statement. The first defendant states that the first plaintiff is brother and the plaintiffs 2 to 4 are sisters. The first defendant secured a job in the year 1955 as Sanitary Inspector, Corporation of Madras and the marriage between the first defendant and fifth defendant was performed in the year 1958. The defendants 1 and 5 were looking after the family affairs. The father of the plaintiffs and defendants 1 to 4 were lived together with meager income. After the death of Late Veerasamy during the year 1960, the family burden was shifted on the first defendant as he happened to be the eldest son of the family. The mother of the plaintiffs and defendants 1 to 4 are illiterate, the mother could not contribute anything for the maintenance and welfare of the family. At the time of death of the father, the plaintiffs 3 and 4 and the defendants 3 and 4 are minors. The marriage of all the brothers and sisters were performed by the first defendant and his wife/5th defendant with the funds out of the earnings, savings and borrowals of the first defendant. After the marriages of the sisters of the first defendant, customary formalities had been done to them by the first defendant and his wife out of their own funds and earnings. The sacrifice of the first defendant and his wife was timely one and immemorable which was appreciated by their mother and she was very much happy as their

sons and daughters were settled and their needs were fulfilled then and there by the first defendant and his wife.

6. The lands situated at Thiruvandavur village, Uthiramerur Taluk were sold by all the legal heirs of Late Veerasamy viz., Smt.Senganiammal and the sons namely the plaintiffs and the first defendant. The sale was registered on 23.08.1971 by receiving a sale consideration of Rs.8,500/-. The sale deed was drafted by the purchasers as instructed by the purchasers. The first defendant had been to Chengalpattu Registrar Office along with his brothers and executed a sale deed at the same time. As intended by the purchaser, the sale consideration was shown as Rs.7,200/-. A sum of Rs.8,500/- was divided into six shares each Rs.1416.66 for mother, first defendant and the plaintiffs herein, all the plaintiffs had issued receipts in favour of the first defendant for the same. Out of the share amount given to mother-Senganiammal and out of the substantial contributions of the first defendant, the marriage of two unmarried younger sisters viz., Jothi/3rd defendant and E.Sulochana/4th defendant were performed. At that time, the second defendant/K.Mariammal had also received a substantial amount from the first defendant and from her mother to discharge her family loans as her husband was employed in Standard Motors Products India Factory which was facing industrial unrest and labour problems.

7. Subsequent to the sale of land a Thiruvandavur village, Uthiramerur Taluk, the marriage of the 6th defendant/Kothandam was performed on 07.03.1977 by the first defendant by spending huge amount for the marriage. The first plaintiff and his wife used to write letters to the first defendant seeking financial assistance for educating his children, hospital expenses and for his daughter's marriage, which was timely rendered by the first defendant and his wife fifth defendant. In the meantime, the third plaintiff lost his employment in PTC and made a request to first defendant to render financial assistance to run the family for which the first defendant and fifth defendant helped his family by rendering financial and physical help. The third plaintiff took the chit proceeds from one Thirugnanasambandam of Choolaimedu to meet out his family expenses which was paid by the first defendant while he was in service. Likewise, the Kothandam written letter to the first defendant for financial assistance for completion of construction and the first defendant also helped him by rendering financial assistance. Apart from this, the plaintiffs 1 and 2 received financial assistance from the first defendant to pay off their advance to the Tamil Nadu Housing Board for their Kotturpuram residence. The amounts given by the first and fifth defendants to the plaintiffs and other defendants on various occasions were never been repaid by

them as they have treated the plaintiffs and other defendants as their children. The first defendant look after his mother very well till her life time and treated her with love, affection and respect. She was fed very well and was given medical treatment whenever it was required, whereas, the plaintiffs and other defendants neglected their mother and the defendants 2, 3 and 4 are always in the habit of extracting money from the mother for their family expenses.

8. Out of the sale proceeds under sale deed documents Nos.2222 and 2223 of 1971, the advance amount was paid for the property bearing No.83, (old Door No.96/c), Habibullah Road, T.Nagar, Chennai-17. The first defendant denied that he put up the superstructure by removing the hut therein along with the plaintiffs. Before commencement of the construction, there was a panchayat with regard to partition of the said property and it is also denied that no power of attorney was obtained by the first defendant. It is denied by the first defendant that the shares were paid from the rental income of the suit property and the belongings of the plaintiffs viz., jewels, furnitures and other valuable movables are still lying in the suit property and they have equal right to access the suit schedule property and the plaintiffs and the first defendant are tenants in common from June 1996.

9. The T.Nagar property was purchased out of the funds of the first defendant's salary, his society loans and sale of jewels of his wife/5th defendant, only after filing an application before the VIth Assistant Judge, City Civil Court, Madras in IA.No.2182 of 1964 in OS.No.292 of 1964 and IA.No.2154 of 1964 in OS.No.293 of 1964, the orders were obtained on 14.08.1969. Subsequently, the instalments were commenced towards cost of the land from 1969, since, there was some dispute over the erstwhile valuation of the larger extent of the land inclusive of Door No.83 (old No.96/c) viz., Dr.M.Gopala Menon, there was a delay in fixing the exact location of the land which should have been allotted to the first defendant. After settling the dispute, the property was purchased in the name of 5th defendant/wife of the 1st defendant and sale deed was registered as Document No.412 of 1974 on 25.03.1974 before the Sub Registrar, T.Nagar. The hut put up by the first defendant was periodically renovated and sometimes changed, to look after his children's education and daughter marriage did not venture to put up any permanent building by removing the hut. The first defendant retired from service during January 1990 and out of his gratuity and provident fund he constructed a pucca building by removing the hut in the T.Nagar property. Hence, the suit property belong to the fifth defendant.

10. The rental income for the portion occupied by the first defendant works out to Rs.10,000/-p.m. is absolutely incorrect and the plaintiffs are entitled for a share of income from July 1996 is totally baseless and unwarranted. The first defendant set up the second defendant to issue notice on 16.07.1998 and subsequently, the second defendant executed a release deed in favour of the first defendant after receiving the plaintiffs share are absolutely false, imaginary, baseless and mischievous. The first defendant already sent a reply dated 06.08.1998 to the second defendant with a copy to all the plaintiffs. Thereafter, the plaintiffs issued a notice on 12.09.1998 for which a reply was sent on 12.10.1998 by the first defendant counsel. Apart from this Notice, the plaintiffs 1, 2 and 3 and the second defendant issued notice under the style "Warning Notice" during July 1989. For which, the first defendant given suitable reply on 26.08.1989. The plaintiffs and the defendants 2, 3 and 4 are not in joint possession of the suit property and they are not entitled for any income from the suit property. The relief claimed by the plaintiffs declaring the sale deed vide Doc.No.412 of 1974 dated 20.03.1974 in favour of the 5th defendant cannot be agitated without the presence of the executant of the document i.e, Dr.M.Gopala Menon, therefore, the suit is liable to the dismissed for non-joinder of necessary parties. Hence, the learned counsel prays for dismissal of the suit.

11. Based on the pleadings and documents filed by both parties and submission made by both the Counsel the following issues have been framed by this Court on 15.10.2008 :-

1. Whether the first defendant acted as "Karta" of the joint family?

2. Whether the suit property was purchased out of joint family nucleus?

3. Whether the suit property was purchased by the first defendant out of his self earnings, society loans and the sale of jewels of his wife in the name of the 5th defendant-his wife?

4. To what reliefs the plaintiffs are entitled to?

12. After framing of issues, during trial, on the side of the plaintiffs PW1 was examined and marked Exs.P1 to P9. On the side of the defendants, 1st defendant was examined as DW1 and marked Exs.D1 to D36.

13. Heard the rival submissions made on both sides and perused the materials available on record.

14. The learned counsel for the plaintiffs would submit that their father Late Veerasamy out of his own funds purchased agricultural lands at No.288, Thiruvandar village, Uthiramerur Taluk, Chengalpet District to an extent of 2.68 cents in S.No.166/1, 0.49cents in S.No.181/3, 0.40cents in S.No.190/2, 0.68 cents in S.No.182/7. Ever since the life time of plaintiffs parents, the plaintiffs and the defendants were residing at No.83, Old No.96-C, Habibullah Road, T.Nagar, Chennai-17. The land owner proceeded against the defendants and the plaintiffs for ejecting them from the said property. The plaintiffs and the defendants jointly decided to sell the property in the native at Chengalpet District with a sole intention to purchase the property at T.Nagar. The property at Thiruvandar Village, Uthiramerur Taluk, Chengalpat District was sold to Krishnamurthy and T.D.Sivaraman vide Document Nos.2222 and 2223 of 1971 dated 23.08.1971. Out of the sale proceeds the property at T.Nagar was advanced and later on purchased. While purchasing the property at T.Nagar it was only a hut house, later on the plaintiffs and defendants jointly put up superstructure in the said property. As requested by the 1st defendant, the plaintiffs signed the power of attorney deed produced by the 1st defendant, till date the plaintiffs were not aware what was the contents in the said instrument. After construction of the suit property in the year 1991, the 1st defendant let out the property to various tenants and

collected the rents and periodically paid the rental incomes to the plaintiffs.

15. The learned counsel for the defendants 1 and 5 would submit that the first defendant secured a job in the year 1955 as Sanitary Inspector, Corporation of Madras and the marriage between the first defendant and fifth defendant was performed in the year 1958. The defendants 1 and 5 were looking after the family affairs. The father of the plaintiffs and defendants 1 to 4 were lived together with meager income. After the death of Late Veerasamy during the year 1960, the family burden was shifted on the first defendant as he happened to be the eldest son of the family. At the time of death of the father, the plaintiffs 3 and 4 and the defendants 3 and 4 are minors. The marriage of all the brothers and sisters were performed by the first defendant and his wife/5th defendant with the funds out of the earnings, savings and borrowals of the first defendant. The lands situated at Thiruvandavur village, Uthiramerur Taluk were sold by all the legal heirs of Late Veerasamy viz., Smt.Senganiammal and the sons namely the plaintiffs and the first defendant. A sum of Rs.8,500/- was divided into six shares each Rs.1416.66 for mother, first defendant and the plaintiffs herein, all the plaintiffs had issued receipts in favour of the first defendant for the same. Out of the sale proceeds under sale deed

documents Nos.2222 and 2223 of 1971, the advance amount was paid for the property bearing No.83, (old Door No.96/c), Habibullah Road, T.Nagar, Chennai-17. The T.Nagar property was purchased out of the funds of the first defendant's salary, his society loans and sale of jewels of his wife/5th defendant, only after filing an application before the VIth Assistant Judge, City Civil Court, Madras in IA.No.2182 of 1964 in OS.No.292 of 1964 and IA.No.2154 of 1964 in OS.No.293 of 1964, the orders were obtained on 14.08.1969. After settling the dispute, the property was purchased in the name of 5th defendant/wife of the 1st defendant and sale deed was registered as Document No.412 of 1974 on 25.03.1974 before the Sub Registrar, T.Nagar. The hut put up by the first defendant was periodically renovated and sometimes changed, to look after his children's education and daughter marriage did not venture to put up any permanent building by removing the hut. The first defendant retired from service during January 1990 and out of his gratuity and provident fund he constructed a pucca building by removing the hut in the T.Nagar property. Hence, the suit property belong to the fifth defendant.

Issue No. 1.

16. The case of the plaintiffs is that the plaintiffs 1 to 3 and defendants 1 and 6 are sons and the defendants 2 to 4 are

daughters of deceased Veerasamy. The 5th defendant is the wife of the first defendant. It is admitted fact that late Veerasamy was doing milk business and out of his own earnings purchased agricultural lands at No.288, Thiruvandar village, Uthiramerur Taluk, Chengalpet District to an extent of 2.68 cents in S.No.166/1, 0.49cents in S.No.181/3, 0.40cents in S.No.190/2, 0.68 cents in S.No.182/7. During the lifetime of said Veerasamy all the plaintiffs and the defendants living with their parents. The said Veerasamy and his wife were residing at No.83, Old No.96-C, Habibullah Road, T.Nagar, Chennai-17. The said land belongs to one Gopalakrishnan. The late Veerasamy, father of the plaintiffs and the defendants 1 to 4 and 6 died intestate in the year 1960 leaving behind his wife/Senganiammal, sons and daughters as his legal heirs. After the death of Veerasamy, the first defendant who is the elder son of Veerasamy look after the family as Kartha of the family. The 2nd plaintiff/Govindasamy was examined as PW1, he has clearly stated during the lifetime of Veerasamy he was doing milk business, out of the earnings he purchased the said property and also living in the land belongs to Gopalakrishnan, after the death of his father, his elder brother/first defendant acted as Kartha of the family. The first defendant has not denied the fact in the written statement and also admitted in paragraph 6 of his proof affidavit that during 1958 he got married with the 5th defendant/Dhanalakshmi and after marriage

also they are living in joint family and taking care of the entire family. His father died at the age of 48 years due to heart ailment and also due to peptic ulcer, as his father has no sufficient income and left no savings or preserved nothing for the future of the family, leaving behind the first defendant to look after the family. During the cross examination, the first defendant admitted that after the death of his father, he acted as Karta of the family and looked after the assets and liabilities and taking care of his brothers and sisters. It is well settled proposition of law that admitted fact need not be proved. As stated by the plaintiff and admitted by the first defendant in his written statement as well as in the cross examination, this Court finds that the first defendant was acted as Kartha of the Joint family. Hence, this issue is answered in favour of the plaintiffs.

Issue No.2 & 3.

17. The case of the plaintiffs is that their father late Veerasamy was doing milk business and out of his own earnings purchased agricultural lands at No.288, Thiruvandar village, Uthiramerur Taluk, Chengalpet District to an extent of 2.68 cents in S.No.166/1, 0.49cents in S.No.181/3, 0.40cents in S.No.190/2, 0.68 cents in S.No.182/7. He died in the year 1960, the first defendant being the elder male member of the family, he looked

after the properties and acted as Kartha of the family and all the brothers and sisters are residing in the suit property. After the marriage, the first defendant is residing in one of the portion, till the construction of permanent superstructure in the suit property, the family members were residing in the suit property. The first defendant himself admitted in the cross examination that till the construction of the building in the year 1991 all the brothers and sisters were residing in the suit property. The first defendant was residing in one of the portion, after the death of their father, in the year 1971 they sold the properties at Chengalpet vide Exs.P1 and P2, the male members of the family (sons of late Veerasamy) sold the property to one Krishnamoorthy and Sivaraman on 23.08.1971 for the sale consideration of Rs.7,200/- and Rs.700/- respectively. Even the documents viz., Exs.P1 and P2 are recited that the sale proceeds would be spent for purchasing of the vacant land of the suit property. Therefore, Exs.P1 and P2 clearly shows that the property belongs to Veerasamy was sold only for purchasing the suit property. Even though the Ex.P9 stands in the name of the fifth defendant who is none other than the wife of the first defendant. The first defendant is the Kartha of the family, the recital contains in Ex.P9 sale deed would show that the sale consideration has been paid by the first defendant and not by the fifth defendant. It is settled proposition that if the property stands in the name of

female, unless it proves that the property was purchased out of joint family nucleus, it belongs to the female members in whose name the property stands. In this case, Ex.P9 shows that the sale consideration was paid by the first defendant/husband of the fifth defendant. As already stated that the first defendant admitted that after the death of the father, he acted as Kartha of the family and also looked after his brothers and sisters and all of them were residing in the suit property. The recitals of the sale deeds under Exs.P1 and P2 would show that the sale proceeds would be spent for purchasing the suit property. Since, the first defendant himself admitted that his wife has studied only 4th standard, she is house wife and has no independent income and source to purchase the property independently. Ex.P9 would clearly show that first defendant alone had paid the sale consideration. The conjoint reading of Exs.P1, P2 and P9, the sale consideration mentioned in Exs.P1 and P2 comes around Rs.7,900/- and the sale consideration of Ex.P9 is Rs.7,500/-. Therefore, from the reading of the pleadings, recitals in Exs.P1, P2 and P9 and also the oral and documentary evidences, this Court comes to the conclusion that the suit property was purchased out of the joint family nucleus. Though, the first defendant has attempted to say that except third defendant all the brothers received their share out of the sale consideration in Exs.P1 and P2, the first defendant has marked

Exs.D2, D8, D9 and D10 are the receipts given by his brothers and they have received their respective shares from the sale consideration of the properties mentioned in Exs.P1 and P2. The first defendant has admitted that he has not stated anything about the Exs.D2, D8, D9 and D10 in the written statement, proof affidavit as well as in the reply notice, the documents were came to light only during the cross examination, stating that the brothers have received their respective shares out of the sale consideration mentioned in Exs.P1 and P2. It is settled proposition of law when there is no pleadings, no evidence can be let in and even if at all let in the Court need not give any effect to that. The first defendant has not stated anything in the written statement, reply notice, proof affidavit and filed those documents only during the course of cross examination. Further, the first defendant admitted that he does not have any documents to prove that he rendered financial assistance to his brothers and also admitted his mother died in the year 1983. It is seen from the sale deed in Exs.P1 and P2 that the father and mother were died intestate, the first defendant has not given any share to his sisters and not specifically stated anything about as to what was the quantum of the amount spent by him for the sisters marriage. In the absence of any such specific pleadings that they sold the property left by his father and divided the sale consideration among the brothers and the remaining amount was

spent for the marriage of their sisters. The first defendant has specifically stated that he purchased the suit property out of his own income in the name of his wife/5th defendant, the plaintiffs have no legal right in the suit property. The amount spent for purchasing the property in Ex.P9 is Rs.7,500/- which is lesser than the amount received in Exs.P1 and P2 Rs.7,200/- and Rs.700/- respectively. A combined reading of the pleadings, oral and documentary evidence of the parties, this Court comes to the conclusion that the suit property was purchased out of the joint family nucleus. The first defendant also admitted during the cross examination that till the demolition of the superstructure all the family members were residing in the suit property and at the time of demolition they vacated the premises.

18. The plaintiffs have made an averment in the pleadings after completing the superstructure they can reoccupy the property, further the first defendant admitted that he was acted as Kartha of the family alongwith his brother's family. All the income and expenditure of the family were maintained by the first defendant. The first defendant has not produced any document to prove that he has given the share amount to the plaintiffs out of the sale consideration of Exs.P1 and P2. Further, the plaintiffs have clearly stated in the plaint that the first defendant obtained power of

attorney from them in his favour and utilized the power of attorney and removed the huts in the suit property and thereafter put up the superstructure in the suit property as his own property. During the cross examination, the first defendant states that he does not remember whether he obtained any power of attorney, whereas he has stated whether he has received any power of attorney or any documents from his brothers in respect of the suit property, at the time of constructing the superstructure and there is no specific denial regarding the power of attorney, which shows that the first defendant has been acted as Kartha of the family. There is no evidence to show that after the death of the father and mother of the parties to the suit they entered into partition or the first defendant obtained any release deed from the brothers and sisters, in the absence of any one such evidence or documents the first issue is answered in favour of the plaintiffs. The first defendant acted as Kartha of the family, the suit property which is purchased out of the joint family nucleus. The first defendant in the written statement and in his cross examination states that the suit property is self earned property and he has not produced any such document to prove that the property is self earned property and the documents produced by the defendants are not sufficient to prove that he purchased the suit property out of his own income and constructed the house. The properties in Ex.P1 and P2 are the

properties purchased by the father of the first defendant, the parents of the first defendant died intestate, thereafter the first defendant acted as Kartha of the family. The first defendant and his brothers jointly sold the property purchased by their father through Exs.P1 and P2 to Krishnamurthy and T.D.Sivaraman for the sale consideration of Rs.7,200/- and Rs.700/- respectively. In Exs.P1 and P2, it is recited that the sale proceeds would be spent for purchasing the property in Ex.P9 is Rs.7,500/- which is lesser than the amount received out of the sale consideration in Exs.P1 and P2. It is also proved that the fifth defendant has no source of independent income to purchase the property in her name. Therefore, the suit property mentioned in Ex.P9 is a joint family property purchased out of the joint family nucleus out of the sale consideration of Ex.P1 and Ex.P2. Hence, the plaintiffs are entitled for partition as prayed for, insofar as means profit is concerned, the plaintiffs are at liberty to seek their remedy under Order 20 Rule 12 CPC.

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19. In the result, the preliminary decree is passed as prayed for. No costs.

08.07.2019.

Index : Yes/No
Internet : Yes/No

List of Witness examined on the side of the plaintiffs

V.Govindasamy - PW1

List of documents marked on the side of the plaintiffs

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	P1	Sale deed No.2222 of 1971 executed by Plaintiffs and defendants to T.D.Sivaraman	23.08.1971
2.	P2	Sale deed No.2223 of 1971 executed by Plaintiffs and defendants to T.D.Sivaraman	23.08.1971
3.	P3	Sale Deed No.412 of 1974 executed by Gopalamenan to 1 st defendant's wife	23.03.1974
4.	P4	Lawyer's notice by plaintiffs counsel to the defendants	12.09.1998
5.	P5	Reply notice	12.10.1998
6.	P6	Retuned Cover by Jothi/3 rd defendant	19.09.1998
7.	P7	Acknowledgment card series	18.09.1998
8.	P8	Notice to the defendants 1 to 5	29.03.2016
9.	P9	Copy of the sale deed	25.03.1974

List of Witness examined on the side of the defendants

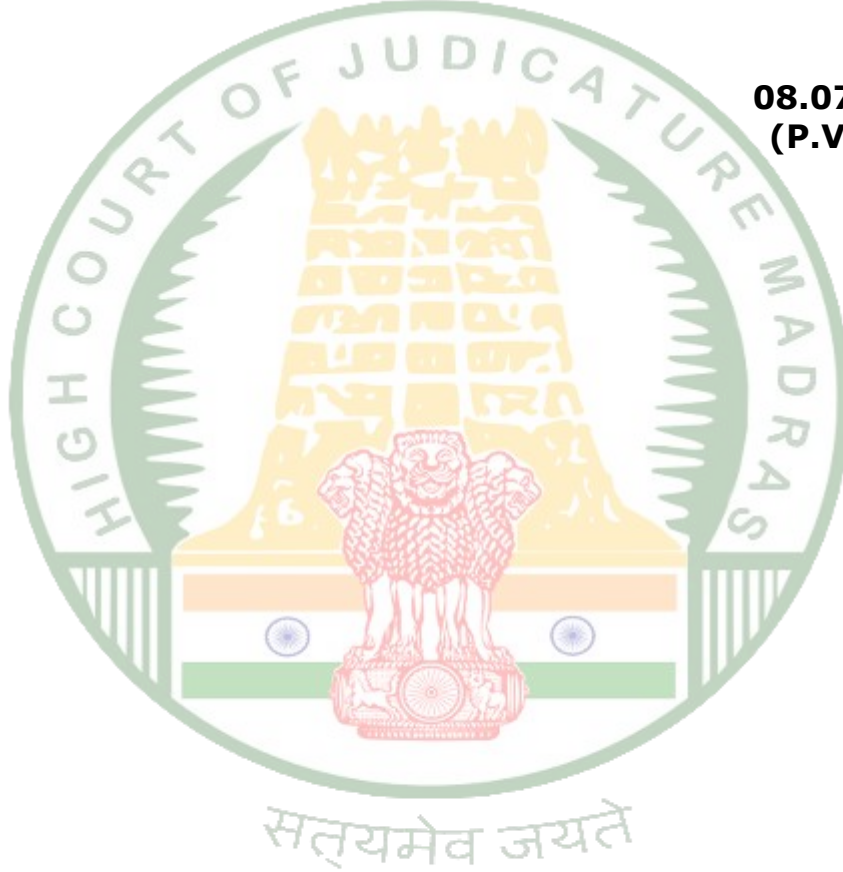
V.Adhikesavalu - DW1

List of documents marked on the side of the defendant

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1.	D1	Signature of DW1 in the Ex.D2 alone is marked as Ex.D1	
2.	D2	Sale price receipt issued by 2 nd plaintiff	20.09.1971
3.	D3	Marriage invitation of 2 nd plaintiff	18.06.1967
4.	D4	Marriage invitation of 3 rd defendant	02.02.1967
5.	D5	Marriage invitation of 3 rd plaintiff	07.02.1971
6.	D6	Marriage invitation of 6 th defendant	07.03.1971

7.	D7	Marriage invitation of 4 th defendant	14.07.1971
8.	D8	Sale price receipt issued by the 1 st plaintiff	20.09.1971
9.	D9	Sale price receipt issued by the 3 rd plaintiff	20.09.1971
10.	D10	Sale price receipt issued by the 6 th defendant	20.09.1971
11.	D11	Letter by 1 st plaintiff to 1 st defendant	01.06.1998
12.	D12	Letter by 1 st defendant to 3 rd plaintiff	28.08.1979
13.	D13	Copy of sale deed Doc.No.412/1974	20.03.1974
14.	D14	Certificate of extract issued to 5 th defendant	15.06.1982
15.	D15	Order of Commissioner, Corporation of Madras intimation of terminal benefits to 1 st defendant	06.11.1990
16.	D16	Additional Construction sanction	14.02.1972
17.	D17	Demand for sanction of building plan issued by Corporation of Madras	01.10.1990
18.	D18	PA to District Collector notice for fixing the market value to 5 th defendant	25.11.1974
19.	D19	Provisional order of PA to Collector fixing market value to 5 th defendant	25.11.1974
20.	D20	Notice to fix the market value sent by PA to District Collector to Mr.Gopala Menon	25.11.1974
21.	D21	Letter by 5 th defendant to District Collector	13.12.1974
22.	D22	Urban Land Tax Demand Notice	06.05.1976
23.	D23	Property Tax Notice	
24.	D24	Property Tax Notice	
25.	D25	Property Tax Receipt	02.08.1979
26.	D26	Property Tax Demand Notice	
27.	D27	Property Tax Receipt	27.11.1990
28.	D28	Property Tax Receipt	19.07.1991
29.	D29	Show cause notice issued by corporation of Madras to 5 th defendant	19.03.1992
30.	D30	Property Tax Receipt	30.04.1992
31.	D31	Property tax Demand card	
32.	D32	Particulars furnished to Income Tax by 5 th defendant	06.04.1995

33.	D33	Letter to Income Tax Department by 5 th defendant	06.04.1995
34.	D34	Judgment in OS.No.3546 of 1994 between Raju V. Dhanalakshmi/5 th defendant	30.04.1997
35.	D35	Decree in OS.No.3546 of 1994 between Raju V. Dhanalakshmi/5 th defendant	30.04.1997
36.	D36	Marriage invitation of 1 st plaintiff	28.08.1966

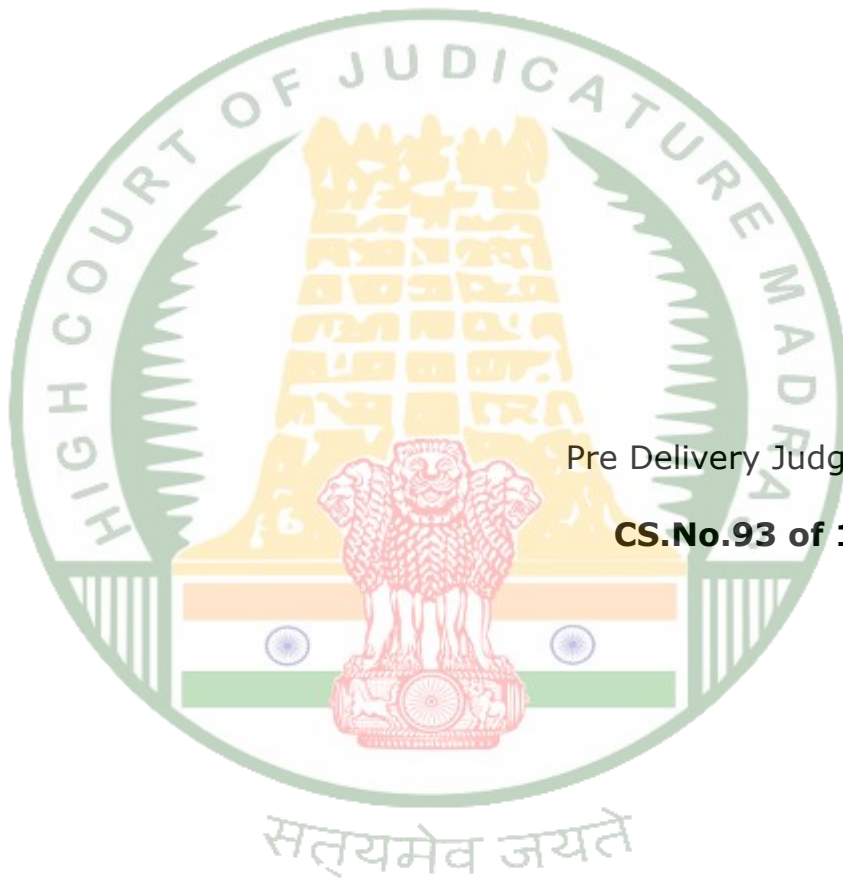


**08.07.2019.
(P.V.J.)**

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P. VELMURUGAN, J.

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