



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 29TH DAY OF OCTOBER 2021

THE HON'BLE MR. JUSTICE N. SESHASAYEE

C.S.No. 291 of 2013

1. C. Kulasekaran,
S/o. K.R. Chinnayan,
No. 702, Mazavarayer Street,
VGP Layout, 3rd Main Road,
Uthandi, Chennai – 600 119.
2. Revathi,
W/o. V. Dinesh Kumar,
D/o. C. Kulasekaran,
3/69A, Lenin Street,
VGP Layout,
Uthandi, Chennai – 600 119.
3. K. Sundar Kumar,
S/o. C. Kulasekaran,
702, Mazavarayer Street,
VGP Layout, 3rd Main Road,
Uthandi, Chennai – 600 119.
4. Smt. R.G. Bhagavathi,
W/o. J. Premkumar,
D/o. V.R. Gangadharan,
Plot No.19, Vignarajapuram 1st Extn,
Vengaivasal, Chennai – 600 073.

... Plaintiffs

-Vs-

1. R.G. Thirugnanasambandan
S/o. Late. V.R. Gangadharan,
No.83/1, Old No. 37,
Nungambakkam High Road,
Chennai – 600 034.



2. R.G. Buvanesh,
S/o. Late. V.R. Gangadharan,
No.83/1, Old No.37,
Nungambakkam High Road,
Chennai – 600 034.

3. Mr. R.G. Panchatchari,
W/o. T. Rajokiam,
D/o. Late. V.R. Gangadharan,
No.19, (Old No.9), 13th Street,
Vinobaji Nagar, Hasthinapuram,
Chrompet, Chennai – 600 064.

... Defendants

Civil Suit praying that this Hon'ble Court be pleased to pass a preliminary decree against the defendants'

a) directing the defendants 1 and 2 to partition the schedule mentioned property by metes and bounds into 5 equal shares and allotting 2/5th share to the plaintiffs;

b) directing the defendants 1 and 2 to pay the mesne profits accrued from the rents received from the schedule mentioned property.

c) Pay the costs of the suit.

This Civil suit having been heard on 06.09.2021 in the presence of Mr.P.Sankaranarayanan, Advocate for the plaintiffs herein and Mr.C.Hanumantha Rao, Advocate for the 1st Defendant and Mr.A.Ganesan, Advocate for the 2nd Defendant and Mr.K.V.Prakash, Advocate for the 3rd

Defendant herein and upon reading the Plaint filed herein and the other exhibits therein referred to and upon perusing the evidence adduced therein



and having stood over for consideration till this date and coming on this day before this Court for orders in the presence of said Advocates for the parties hereto and this Court having observed that the plaintiffs are not entitled to any share in the properties, as the suit property has been already partitioned orally, as evidenced by Ex.D4 and the suit has to fail, and Courts exist not for someone no wager on litigation and utilise the institution of Courts as casinos, but that precisely the plaintiffs herein have done, and normally in a suit for partition the Court may not order Costs, but not in this Case, **it is ordered as follows:-**

That the suit in C.S.No. 291 of 2013, be and is hereby dismissed.

2. That the plaintiffs herein do pay to the defendants herein, the costs of this suit, as and when taxed by the taxing officer of this Court, and noted in the margin thereof.

WITNESS THE HON'BLE MR. JUSTICE SANJIB BANERJEE,
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
29TH DAY OF OCTOBER 2021.

Sd/-

ASSISTANT REGISTRAR (O.S.II)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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28.12.2021

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C.S.No. 291 of 2013

ORDER

DATED: 29.10.2021

THE HON'BLE MR. JUSTICE
N.SESHASAYEE

FOR APPROVAL: 30/12/2021

APPROVED ON: 03/01/2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 06.09.2021

Judgment Pronounced on : 29.10.2021

CORAM : JUSTICE N.SESHASAYEE

C.S.No.291 of 2013

1.C.Kulasekaran
2.Revathi
3.K.Sundar Kumar
4.R.G.Bagavathi

... Plaintiffs

Vs.

1.R.G.Thirugnanasambandan
2.R.G.Buvanesh
3.R.G.Panchatchari

... Defendants

Prayer : Civil Suit filed under Order XXIV of the Original Side Rules read with Order 34 Rule 1 of CPC., praying for a judgment and decree :

- (a) directing the defendants 1 and 2 to partition the schedule mentioned property by metes and bounds into 5 equal shares and allotting 2/5th share to the plaintiffs;
- (b) directing the defendants 1 and 2 to pay the mense profits accrued from the rents received from the schedule mentioned property;
- (c) pay the costs of the suit and

(d) pass such further orders as this Court may deem fit.



For Plaintiffs : Mr.P.Sankaranarayanan

For Defendants : Mr.C.Hanumantha Rao for D1
Mr.A.Ganesan for D2
Mr.K.V.Prakash for D3

JUDGMENT

1. The suit is laid for partitioning the estate of certain Nageswari Ammal. The suit property is described as a plot measuring 4,662 sq.ft., with a building thereon in S.No.406 of Nungambakkam Village. Nageswari Ammal died intestate on 20.4.1986. Her husband Gangadharan predeceased her on 06.10.1955. She had three daughters and two sons, of who, one of her daughter named Ullasaramani had passed away at that time when the suit was laid. The first plaintiff is the husband of Ullasaramani, and the plaintiffs 2 and 3 are the children of Ullasaramani. The another daughter of Nageswari Ammal is the fourth plaintiff, and yet another daughter of Nageswari Ammal is the third defendant. Her two sons are arrayed as defendants 1 and 2.

2. The case of the plaintiffs is straight-forward : Nageswari Ammal died intestate and her property devolved equally on her five children, which includes the deceased daughter of Nageswari Ammal, and that the plaintiffs are jointly entitled to 2/5 share in the suit property.



3. The defendants 1 & 2 filed separate written statements, but the right of defense is substantially the same. According to them, that there was an earlier family arrangement between all the children of Nageswari Ammal, and that the same was reduced to writing on 23.01.1998. Under the family arrangement, the entire property was divided, and as per that the property was divided into three parts. The first portion was described as 'A' schedule in the family arrangement and it was allotted to the first defendant. The property described in the 'B' schedule was allotted to the second defendant, whereas that which is detailed in the 'C' schedule was allotted to all the daughters of Nageswari Ammal. To make it specific, 'C' schedule was allotted jointly to the fourth plaintiff, the third defendant and plaintiffs 1 to 3, who as stated earlier are the heirs of Ullasaramani, the predeceased daughter of Nageswari Ammal. It is the further contention that pursuant to the same, mutation in the revenue records and also in records of the Corporation have taken place, and the defendants 1 and 2 have begun to assert title over the same, and that they have also engaged in acts of ownership by mortgaging the property etc., The suit is barred by limitation.

4.1 The following issues are framed for trial and adjudication :

(1) Whether the plaintiffs are entitled to 2/5 undivided share in the schedule mentioned property?



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(2) Whether the family arrangement dated 23.01.1998 is true and binding on all the legal heirs?

(3) Whether the family arrangement dated 23.01.1998 is admissible in evidence?

(4) Whether the property is a joint family property?

(5) Whether the family arrangement dated 23.01.1998 was acted upon?

(6) Whether the plaintiffs are entitled to mesne profits?

(7) To what other reliefs, the plaintiffs are entitled to?

4.2. For the plaintiffs, the fourth plaintiff has entered the box and through her Exts.P1 to P6 were marked. For the defendants, the first and second defendants were examined respectively as D.W.1 and D.W.2. They have produced Exts.D1 to D31. Of the documents produced on either side, the critical document was Ext.D4, dated 23.1.1998, which according to the defendants, was the record evidencing the family arrangement that they plead. This document was introduced in evidence during the cross-examination of P.W1. Issues 2 to 5 pertain to or revolve around this family arrangement.

5. The learned counsel for the plaintiffs would submit that Ext.D-4 is not a document recording the family arrangement, but, it is a partition deed. He



took the Court through the recital and various clauses of the document and informed the Court that every term therein indicates that the division of the property was intended to take place only under the said document and it cannot be construed as a document recording the family arrangement. He also added that because this document came to be marked in the cross-examination, the learned Master omitted to note the fact that this document was neither stamped nor registered. He relied on the authority reported in ***A.C.Lakshmipathy and Ors. Vs. A.M.Chakrapani Reddiar and Ors.*** [(2001) 1 MLJ 1] He also took this Court to the certain passages from the cross-examination of defendants 1 and 2.

6.1 Per contra, the learned counsel appearing for the defendants 1 and 2 made the following statements :

- (a) When Ext.D-4 was confronted to P.W1 during her cross examination, she had deposed that the first defendant had visited her and obtained some signatures. This implies that her signatures must have been obtained at any time before 23.01.1998, or atleast on 23.01.1998. This implies the execution of the document goes as an admitted fact, and this document was neither denied, nor challenged in the manner known to law.



(b) This apart, besides Ext.D-4, but following the same, there is another document which was signed by all the children of Nageswari Ammal and this is Ext.D11. It is a communication addressed to the Corporation. It is date-less, but it bears the jotting of the Corporation authority who received it, and this authority has noted the date as 25.04.2003. In this document, all the parties in unison make a joint statement about the family arrangement, and also the subsequent recording of the same under Ext.D4.

(c) These defendants have exercised their right of ownership as could be seen from Exts. D7, D9,D10, D12 to D22.

6.2 The learned counsel for the defendants would further argue that a suit for partition is not maintainable since Ext.D-4 is now available on record as an admitted document. Unless this document is impeached in the manner known to law, a fresh cause of action for partition cannot arise. Secondly, a suit for cancellation of the document cannot now be filed, even if there was a cause of action for the plaintiffs to challenge it, then it ought to have been instituted latest by 21.01.2001, since under Article 59 of the Limitation Act, it should have been instituted within three years. When Ext.D4 read with



of re-partitioning the properties do not arise, He relied on the authorities in

P.N.Wankudre Vs. C.S.Wankudre [AIR 2002 Bombay 129]; *Chandrama Singh Vs. Phagu Ram Verma* [2017 AIR VV 2455 (ALL)] and *Raghunath Vs. Phulbasia* [2020 AIR CC 644 (Chhattisgarh)].

7. The counsel for the plaintiffs took this Court through the cross-examination of D.W.2 dated 12.03.2019 to highlight that pursuant to the family arrangement, neither revenue mutation nor mutation of property tax register had taken place. Even electricity connection, stands only in the name of the first defendant, who again concedes that it is thus standing in the name of the first defendant as he is the head of the family.

ISSUES 2 to 5

8.1 While issue 3 requires this court to enter a finding on the genuineness of alleged family arrangement, and on the admissibility of Ext.D-4, issue 5 Pre-supposes the existence of the family arrangement as alleged by defendants 1 and 2.

8.2 A critical to resolving the issue is Ext.D4. This document is styled as a deed of family arrangement and was executed by all the five children of



the Court, the following recital and operative portion of the document are relevant:

“And whereas the parties of First and Second Parts have been solely maintaining the property, paying the taxes and meeting the interest liabilities.

And whereas the parties of 3rd, 4th and 5th part being sisters of the parties of 1st and 2nd part have been claiming rights and a share in the schedule mentioned property.

.....
.....

And whereas the said agreed decision has been implemented and respective portions of property taken over by the respective parties and it is thought fit that the same should be reduced to writing.

NOW THIS DEED WITNESSETH

- 1. That the party of 1st part was allotted portion marked ABCD in the sketch annexed hereto and described in the schedule A hereunder and taken over by him.*
- 2. That the party of 2nd part was allotted portion marked CDEF in the sketch annexed hereto and described in the Schedule B hereunder.*
- 3. That the parties of 3rd part 4th and 5th parts were allotted collectively portion marked EFGH in the sketch annexed hereto and described in the Schedule CEFGH hereunder.*
- 4. That the respective parties 1 to 5 mentioned above had.*



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already taken possession of the respective portion of the property allotted to each of them and each is at liberty to apply for mutation of name in the public records, without any let or hindrance of other parties.”

Each of the highlighted portion in the recital or in the terms of Ext.D-4, indicates that it is a recording of what has already taken place. The tense used was either simple past, or past participle, and there is no indication that there is an *in presenti* division of the property under Ext.D-4. In other words, Ext.D-4 is only a memorandum of an oral partition which had already taken place, the style adopted in recording the same notwithstanding. Needless to mention that it neither requires to be written in a stamp paper, nor does it require any registration and is admissible in evidence.

Issue 3 is decided in favour of the defendants.

8.3 The list of corroborative circumstances in aid of legal validity of Ext.D-4 may now be provided:

- Ext.P-2 is the pre-suit notice demanding partition. The first defendant had replied it Vide Ext.P-3. In his reply, the first defendant had disclosed Ext.D-4. And, in the plaint it is alleged that the signatures of the 4th plaintiff, Ullasaramani (whose legal representatives are defendants 1 to 3), and 3rd defendants’ signatures



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were obtained without their lending consensus to the same. Having admitted the execution of the document, the plaintiffs cannot avoid Ext.D-4 with only a sentence in the pleading, and this strategy of the plaintiffs fail in this forensic scrutiny.

- Secondly, only the 4th plaintiff has examined herself, but not the first plaintiff, who is the most competent witness among the heirs of Ullasaramani. And, the third defendant, who joined the plaintiffs in issuing notice, not only chose not to join them in laying the suit, but also chose not to file a written statement explaining the circumstances under which she signed Ext.D-4. P.W.1 is incompetent to speak for the third defendant, and hers is a hearsay evidence at the best.
- It is in this back drop Ext.D-11 needs to be appreciated. It is a letter dated 25-04-2003, signed by all the heirs of Nageswari Ammal to the Corporation Authority, in which both the family arrangement and Ext.D-4 were mentioned. The plaintiffs have no tenable explanation for signing this letter. Even if P.W.1's version pertaining to Ext.D-4 were presumed to be true, it amazes the Court that a person should commit the mistake of signing one more document against her interest five years after Ext.D-4.



9. The next aspect is if the family arrangement has taken effect. This pertains to acts of ownership pursuant to Ext.D-4. The defendants 1 and 2 have produced a list of documents to support this, but critical among them are Exts. D-12, and D-13, both of which are mortgage deeds executed by these defendants as regards the portion allotted to them as evidenced by Ext.D-4. These documents were executed in 2010 and they recite the family arrangement. This is followed by Ext.D-19 to D-22 lease deeds. Of them two documents (Exts. D-21 and D-22 are after suit), but given the background in which these documents are positioned, they merit consideration. This apart, the first defendant had also laid RCOP 1115/2006 against one of the tenants of the portion allotted to him which is evidenced by Ext.D-26. This is some seven years before the institution of the present suit. These documents definitely constitute a body of evidence to substantiate that the defendants 1 and 2 have acted on the family arrangement. And, there is no rebuttal evidence to nullify their evidentiary value. The plaintiffs only contend that revenue record/corporation records were mutated only during the pendency of the suit, but this has little efficacy in negating the validity of Ext.D-4 or the family arrangement that it has recorded.

10. In conclusion, **both issues 2 and 5 are decided in favour of the defendants 1 and 2, and Issue 4 is decided against the plaintiffs.**



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11. The answer to the Issues 1, 6 and 7 are to state the obvious. The plaintiffs are not entitled to any share in the properties, as the suit property has been already partitioned orally as evidenced by Ext.D-4. The suit has to fail.

12. Now to the conduct of the plaintiffs. They knew that there is Ext.D-4 and D-11, which all the heirs of Nageswari Ammal had executed. Still they pretend innocence in trying rather weakly in avoiding Ext.D-4. Courts exist not for someone to wager on litigation and utilise the institution of Courts as Casinos. But that precisely the plaintiffs herein have done. Normally in a suit for partition the Court may not Order costs, but not in this case.

13. Accordingly, the suit is dismissed with costs.

APPENDIX

I. Witnesses :

<i>Plaintiff :</i>	
PW1	R.G.Bagavathi (4 th plaintiff)
<i>Defendant :</i>	
DW1	R.G.Thirugnanasambantham (1 st defendant)

**II. Exhibits :**

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<i>Plaintiffs :</i>		
Ex.P1	05.11.1956	Certified copy of sale deed executed by the vendor of Nageswariammal, mother of the 4 th plaintiff and defendants 1 to 3 in her favour
Ex.P2	28.07.2011	Original legal notice issued to the defendants 1 and 2
Ex.P3	10.08.2011	Original reply notice sent by 1 st defendant's counsel to the plaintiff's counsel
Ex.P4	08.09.2006	Original death certificate of Ullasaramani
Ex.P5	31.08.2012	Original legal heirship certificate – declaring plaintiffss 1 to 3 are the heirs of Ullasaramani
Ex.P6	03.10.2012	Original Encumbrance certificate for the period 1956 to 2013

<i>Defendants :</i>		
Ex.D1	12.01.1971	Certificate issued by the Society for the loan discharged on 03.09.1958
Ex.D2	06.03.1957	Original sale deed
Ex.D3	23.01.2017	Schedule of Property
Ex.D4	23.01.1998	Original Family Arrangement Deed
Ex-D5		Original E.B.Card in the name of 1 st defendant
Ex-D6	09.11.1984	Original deed of simple mortgage executed by Nageswariammal in favour of mortgagee Mrs.Noorjahan, registered as Doc.No.529 of 1984
Ex.D7	24.04.1989	Original deed of simple mortgage executed by defendants 1 & 2 in favour of mortgagee Mr.K.C.Abdul Jabbar, for Rs.1,00,000/-, registered as Doc.No.294 of 1989



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Defendants :		
Ex.D8	28.02.2001	Letter issued by TNEB to the 1 st defendant intimating the payment of retirement benefits
Ex.D9	06.04.2001	Receipt for payment of Rs.50,400/- made by 1 st defendant towards full settlement against mortgage deed dated 09.11.1984 (Doc.No.529/1984)
Ex.D10	06.04.2001	Receipt for payment of Rs.1,35,000/- made by 1 st defendant towards full settlement against mortgage deed dated 24.04.1989 (Doc.No.294/1989)
Ex.D11		Original letter addressed to the Corporation of Chennai by the 1 st defendant requesting sub-division and registration of properties in the names of the legal heirs of Nageswari Ammal, owing to family arrangement
Ex.D12	01.07.2010	Xerox copy of mortgage by deposit of title deed executed by the 1 st defendant in favour of Mr.K.Kalaimurthy, mortgagee for Rs.4,90,000/-
Ex.D13	30.04.2010	Xerox copy of simple mortgage deed executed by the 2 nd defendant in favour of Mr.Lalit C.Jain, mortgagee for RS.10 lakhs
Ex.D14	05.02.2018	Original Rent receipt towards rent collected by the 1 st respondent from his tenant for the month of January 2018, in letting out a portion of his premises for running a shop
Ex.D15	05.03.2018	Original Rent receipt towards rent collected by the 1 st respondent from his tenant for the month of February 2018, in letting out a portion of his premises for running a shop
Ex.D16	05.04.2018	Rent receipt towards rent collected by the 1 st respondent from his tenant for the



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Defendants :		
		month of March 2018, in letting out a portion of his premises for running a shop
Ex.D17	05.05.2018	Original Rent receipt towards rent collected by the 1 st respondent from his tenant for the month of April 2018, in letting out a portion of his premises for running a shop
Ex.D18	05.06.2018	Original Rent receipt towards rent collected by the 1 st respondent from his tenant for the month of May 2018, in letting out a portion of his premises for running a shop
Ex.D19	21.09.2012	Original Lease deed executed between the 1 st defendant and his lessee Mr.K.C.Abdul Jabbar
Ex.D20	27.07.2013	Original Lease deed executed between the 1 st defendant and his lessee Mr.M.Y.Gowthul Agalam
Ex.D21	10.09.2016	Original Lease deed executed between the 1 st defenant and his lessee Mr.Sadiq Ali
Ex.D22	10.09.2016	Original Lease deed executed between the 1 st defendant and his lessee Mr.M.Y.Gowthul Agalam
Ex.D23	16.08.2018	Original letter from the plaintiffs' counsel to the 1 st defendant's counsel for production of certain documents
Ex.D24	06.09.2018	Original letter from the 1 st defendant's counsel to the plaintiffs' counsel in reply to his letter dated 16.08.2018 furnishing certain documents
Ex.D25	29.08.2002	Original lease deed executed between the 1 st defendant and his lessee Mr.K.C.Abdul Jabbar
Ex.D26	27.11.2007	Photocopy of order copy in RCOP.No.1115/2006
Ex.D27		Original Electricity consumption charges



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Defendants :		
		card that stands in the name of Mr.Abdul Jabbar, the tenant under 1 st defendant (Happy Home)
Ex.D28		Original Electricity consumption charges card that stands in the name of the 1 st defendant (Mobile shop)
Ex.D29		Original Electricity consumption charges card that stands in the name of the 1 st defendant (Tea shop)
Ex.D30	07.01.2018	Original Rent receipt towards rent collected by the 1 st respondent from his tenant for the month of December 2017, in letting out a portion of his premises for running a shop
Ex.D31		Original Electricity consumption charges card that stands in the name of the 1 st defendant (06.2.2018 to 04.6.2018)

Sd./-N.S.S.J.,
29.10.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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