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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 06TH DAY OF JANUARY 2022

THE HON'BLE MR. JUSTICE N. SESHASAYEE

C.S.No. 694 of 2012

P. Navaneetharaj,
S/o. Ponnappa Pillai @ Perumal,
No.1, 4th Lane, Kummalamman Koil Street,
Tondiarpet, Chennai - 600 081.

... Plaintiff

-Vs-

1. S. Ravi,
S/o. P. Subramani,
No.3, Stephen Lane,
Avvai Nagar, Vyasarpadi,
Chennai - 600 039.
2. Tmt. S. Gomathi,
D/o. P. Subramani,
8/1, Balakrishna Mudali Street,
Vyasarpadi, Chennai - 600 039.
3. Tmt. Anjanapriya,
W/o. S. Prabakaran,
4. Minor Gomatheeswaran,
Rep. by mother and natural guardian,
Tmt. Anjanapriya,
5. Tmt. Neelavathy,
W/o. P. Subramani,
3 to 5 are residing at
No.3, Stephen Lane, Avvai Nagar, 1st Street,
Vyasarpadi, Chennai - 600 039.



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*6. The Asst. Commissioner (ULT),
Mylapore, Chennai - 4.

*7. The Collector,
Chennai District,
Chennai - 1.

*8. The District Revenue Officer,
Chennai District, Chennai - 1.

*9. The Tahsildar,
Mylapore-Triplicane Taluk,
Mylapore, Chennai – 4.

**(Defendants 6 to 9 Suo motto impleaded
as per order dated 26.11.2012 passed in
Application No. 4724 of 2012)**

*10. The Tamil Nadu Wakf Board,
Rep. by its Chief Executive Officer,
No.1, Jaffar Syrang Street,
Vallalseethakadi Nagar,
Chennai – 1.

... Defendants

**(Defendants 10 Suo Motto impleaded as
per order dated 17.08.2016 in A.No. 2814 of 2013
and order dated 6.10.2016)**

Civil Suit praying that this Hon'ble Court be pleased to pass a
judgment and decree:-

a) for a declaration declaring the decree dated 11.03.2010 passed in
C.S. No.185 of 2008 as null and void and not binding on the plaintiff;

b) to pass a preliminary decree for partition and separate possession
of plaintiff's half share in the suit property morefully described in the
schedule hereunder;



c) for appointment of an Advocate Commissioner to divide the suit property by metes and bounds and for allotment of plaintiff's undivided half share in the suit property;

d) for permanent injunction restraining the defendants herein, their men, agents, servants or any other person claiming through them from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the suit property by the plaintiff;

e) for the costs of this suit.

Counter Claim by defendants 1 to 5 praying that this Hon'ble Court be pleased to dismiss the suit filed by the plaintiff and allow the counter claim of the defendants 1 to 5, declaring that the defendants 1 to 5 are the absolute owners of the property vacant land measuring 90 grounds and 75 sq.ft., comprised in R.S.No.2024 (O.S.Nos.2279, 2275, 2276, 2277, 2252 and 2252, Mylapore Village, Mylapore Triplicane Taluk, Chennai and morefully described in the schedule hereunder together with cost.

This Civil suit coming on this day before this Court for hearing, in the presence of Mr.Ravichandran Sundaresan, Advocate for the defendants 1 to 5 herein and Dr.S.Suriya, Additional Government Pleader appearing for the defendants 7 to 9 herein and the plaintiff herein not appearing in person or



by advocate and upon reading the plaint filed by the plaintiff herein and the counter claim filed by the defendants 1 to 5 herein and the order herein dated 09.10.2017 and the order dated 08/10/2021 made in OSA No. 181 of 2018 and the order dated 20/12/2021 made in C.S.No. 694 of 2012 and the other exhibits therein referred to and upon perusing the evidence adduced therein and this Court having observed that all the documents preponderates only the case of the defendants and necessarily, the counter claim of the defendants 1 to 5 is required to be decreed,

It is ordered and decreed as follows :-

That (1) S. Ravi, (2) S. Gomathi. (3) Anjana Priya, (4) Minor Gomatheeswaran, Rep.by mother and natural Guardian Tmt.Anjanapriya and (5) Neelavathy, the defendants 1 to 5 herein be and are hereby declared as the absolute owners of the property morefully set out in the schedule hereunder.

2) That there shall be no costs of this Suit.

SCHEDULE OF PROPERTY

All that piece and parcel of the vacant land situated at Nos. 129/C2, 129/C, 130/6, 132, 132/C & 134, Mundakkanni Amman Street (Arundel Street) Mylapore, Chennai – 4, comprised in R.S.No. 2024 (O.S.Nos. 2279, 2275-2277, 2252 & 2253), admeasuring 90 Grounds & 75 Sq.ft. bounded



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North by : Paripoorna Vinayagar Koil Street

South by : Kutchery Road

East by : Arundel Road &

West by : Mundakkanni Amman Koil Street

situated within the registration District of Central Chennai and Sub
Registration District of Mylapore.

WITNESS THE HON'BLE MR. JUSTICE MUNISHWAR NATH
BHANDARI, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS
AFORESAID, THIS THE 06TH DAY OF JANUARY 2022.

Sd/-

ASSISTANT REGISTRAR (O.S.I)

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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of the Orders/Judgments/Decrees in this format.



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09.03.2022

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C.S.No. 694 of 2012

ORDER

DATED : 06.01.2022

THE HON'BLE MR. JUSTICE
N. SESHASAYEE

FOR APPROVAL : 09.03.2022

APPROVED ON : 09.03.2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.01.2022

CORAM : JUSTICE N.SESHASAYEE

C.S.No.694 of 2012

P.Navaneetharaj

...

Plaintiff

Vs.

1.S.Ravi

2.S.Gomathi

3.Anjanapriya

4.Minor Gomatheeswaran

5.Neelavathy

6.The Assistant Commissioner (ULT)
Mylapore, Chennai – 600 024.

7.The Collector
Chennai District
Chennai – 600 001.

8.The District Revenue Officer
Chennai District
Chennai.

9.The Tahsildar
Mylapore – Triplicane Taluk
Mylapore, Chennai – 600 004.

10.The Tamil Nadu Wakf Board
Rep by its Chief Executive Officer
No.1, Jaffer Syrang Street
Vallal Seethakadi Nagar
Mannady, Chennai – 600 001.

...

Defendants



[Defendants 6 to 9 suo moto impleaded as per order dated 26.11.2012 passed in A.No.4724 of 2012]

[Defendant 10 suo moto impleaded as per order dated 17.08.2016 in A.No.2814 of 2013]

Prayer in C.S.No.694 of 2012 : Civil Suit filed under Order VII Rule 1 of CPC., r/w. Order IV Rule 1, O.S. Rules praying to pass a judgment and decree :

- (a) for a declaration declaring the decree dated 11.3.2010 passed in C.S.No.185 of 2008 as null and void and not binding on the plaintiff;
- (b) to pass a preliminary decree for partition and separate possession of plaintiff's half share in the suit property morefully described in the schedule hereunder;
- (c) for appointment of an Advocate Commissioner to divide the suit property by metes and bounds and for allotment of plaintiff's undivided half share in the suit property;
- (d) for permanent injunction restraining the defendants herein, their men, agents, servants or any other person claiming through them from interfering with the plaintiff's peaceful possession, occupation and enjoyment of the suit property by the plaintiff;
- (e) for the costs of this suit; and
- (f) for such further or other reliefs as this Court may deem fit and proper in the circumstances of the case.

Prayer in Counter Claim by defendants 1 to 5 : Written Statement and Counter Claim filed under Order-V, Rule 1 & 2 of the O.S. Rules, r/w. Order VIII Rule 1 & 60A CPC., praying to dismiss the suit filed by the plaintiff and allow the counter claim of the defendants 1 to 5, declaring that the defendants 1 to 5 are the absolute owners of the property vacant land measuring 90 grounds and 75 sq.ft., comprised in R.S.No.2024 (O.S.Nos.2279, 2275, 2276, 2277, 2252 and 2252, Mylapore Village, Mylapore Triplicane Taluk, Chennai and morefully described in the



schedule hereunder together with cost.

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For Plaintiff : No appearance

For Defendant : Mr.Ravichandran Sundaresan
[D1 to D5]
Dr.S.Suriya,
Additional Government Pleader [D7 to D9]

JUDGMENT

The plaintiff has laid the suit for a declaration that the decree dated 11.03.2010 passed in C.S. No. 185 of 2008 is null and void and for a decree of partition. The first defendant, on his part, not only resisted the suit but also has preferred a counter-claim for a declaration that defendants 1 to 5 are the absolute owners of the suit property.

2. Pleadings in the suit were completed, issued framed and the matter was posted before the learned Additional Master III for holding trial. The plaintiff did not enter the box and the suit came to be dismissed for default on 20.12.2021. Only the counter-claim is alive for consideration now. The first defendant, who examined himself as D.W.1 has produced documents Exs.D1 to D13.

3. The facts may be narrated briefly:



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- A certain Ponnappillai @ Perumal and his wife Govindammal had two sons, namely, the plaintiff herein and one Subramani, who passed away and his widow is the fifth defendant. They had three children and they are defendants 1 and 2 and one S. Prabhakaran. Prabhakaran is dead and his heirs are defendants 3 and 4.
- According to the plaintiff, the suit property originally belonged to his mother Govindamaml, that on her death it devolved equally on the plaintiff and Subramani, that the suit property had a total extent of 116.13 grounds, that due to certain encroachments, the extent of property under the enjoyment of the parties was reduced to 90 grounds and 75 sq.ft.,, and that the Assistant Commissioner, Urban Land Tax held that both the plaintiff and Subramani were joint owners of the property.
- While so, on 02.02.2007, the first defendant herein took the plaintiff to the office of the Sub Registrar, Mylapore for executing a sale agreement pertaining to his share, obtained signatures of the plaintiff, but managed to have a settlement deed executed in favour of his father Subramani (brother of the plaintiff).
- On coming to know of this fraud, the plaintiff cancelled the said document on 06.03.2007. The plaintiff also came to know that in assertion of the title based on the aforesaid settlement deed,



defendants 1, 2 and Prabhakaran had laid a suit against their father Subramani in C.S. No. 185 of 2008 for partition of their shares and that came to be compromised among all the four parties to that suit. Hence, he came out with a suit for declaration that the decree passed in C.S.No. 185 of 2008 is null and void and also prays for a decree of partition.

3. The contention of defendants 1 to 5 is as follows:

- The property does not belong to Govindammal, but to Ponnappillai @ Perumal. On 29.07.1955, Ponnappillai settled the said property in favour of his son Subramani. While so, Subramani attempted to dispose of the property and hence, defendants 1 and 2 along with their brother Prabhakaran, had laid a suit against their father Subramani in C.S.No.185 of 2008 for partition. That suit was decreed and each of the party are granted a decree for one-fourth share each, equalling to 22.5 grounds each.
- So far as the settlement deed dated 02.02.2007 is concerned, it is fabricated by the plaintiff with an ulterior motive to create title for the property and that on the thirty third day of executing the same, he had also cancelled it, just to create a documentary proof as if he had a share in the property. So far as the proceedings of the Assistant



Commissioner, Urban Land Tax is concerned, those proceedings cannot affect title and that the proceedings were brought into existence, thanks to the fraudulent efforts of the plaintiff.

These defendants seek declaration of title over the suit property which is also reproduced in the schedule of the property in the written statement.

4.1 As already noted, the suit was dismissed for default and to prove the counter claim, the first defendant examined himself as D.W.1 and has produced documents Exs.D1 to D13.

4.2 Of all the exhibits produced, Exts.D1 to D3 are critical. Ext.D1 is the copy of the sale deed executed in favour of Ponnappillai @ Perumal sometime in December 1915; Ext.D2 is the settlement deed dated 29.07.1955, which Ponnappillai had executed in favour of Subramani (one of the sons of Ponnappillai), under whom these defendants claim their shares as his heirs. Ext.D3 is the notice issued by the Assistant Commissioner of Urban Land Tax to the said Subramani. Ext.D8 is the copy of the decree in C.S.No.185 of 2008.

4.3 These documents strongly indicate that not only Subramani had held title over the property in question, but also has been recognised as such. In



fact, Ext.D2 was executed before the alleged date of settlement deed which the plaintiff is stated to have executed in favour of Subramani in 2007.

5. All the documents preponderates only the case of the defendants and necessarily, the counter claim of the defendants 1 to 5 is required to be decreed.

6. Accordingly, the counter claim is allowed and the title of the defendants 1 to 5 are declared to the suit property / the property scheduled in the written statement. No costs.

APPENDIX

I. Witnesses :

Defendants : Mr.S.Ravi (DW1)

II. Exhibits :

Defendants :		
Ex.D1	Dec. 1915	Sale Deed executed by Kalappa Naidu in favour of Thiru.Ponnapillai @ Perumal
Ex.D2	29.7.1955	Settlement Deed executed by Thiru.Ponnapillai @ Perumal in favour of Mr.P.Subramani
Ex.D3	04.08.2006	Form 4-C Notice issued to Mr.P.Subramani by the Assistant Commissioner of Urban Land Tax, Chennai.
Ex.D4	21.01.2008	Death Certificate of Thiru.Ponnapillai @ Perumal
Ex.D5	23.01.2008	Death Certificate of Tmt.Govindammal
Ex.D6	19.02.2009	Death Certificate of Thiru.Prabhakaran
Ex.D7	30.3.2009	Legal Heirship Certificate of Thiru.Prabhakaran
Ex.D8	11.03.2010	Judgment and decree in C.S.No.185 of 2008
Ex.D9	16.09.2010	Death Certificate of Thiru.P.Subramani
Ex.D10	06.10.2010	Legal Heirship Certificate of Thiru.P.Subramani



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Defendants :		
Ex.D11	04.01.2012	Legal notice issued to 10 th defendant by the counsel for defendants 3 to 5
Ex.D12	28.06.2012	Letter from the District Revenue Officer to the Tahsildar
Ex.D13	21.08.2012	Letter to the fifth defendant by the Public Information Officer furnishing the PLR extract copies of RS.No.2024, 2025 of Mylapore Village.

Sd./- N.S.S.J.,
06.01.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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