



C.S.No.48 of 2018

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 07.08.2023

Judgment Pronounced on : 09.10.2023

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

C.S.No.48 of 2018

1.C.Krishnaveni Ammal
2.K.Chelliah Nadar

.... Plaintiffs

Vs.

1.K.Palraj
2.K.Dhanasekaran
3.N.Murugeswari
4.J.Chandra
5.K.Srinivasan
6.V.Kamala
7.K.Ramesh
8.J.Jayalakshmi @ Tamilselvi
9.Kaleeswari @ Kavitha
10.Kamesh

.... Defendants

Prayer : Civil Suit filed under Order IV & Rule 1 of the O.S.Rules 1956 read with Order VII Rule 1 of Civil Procedure Code 1908 praying for a judgment and decree against the defendants:

(1) To pass a preliminary decree for the plaintiffs 10/18th share in



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the suit schedule property.

- (2) To appoint an Advocate Commissioner to suggest a mode of division of the Suit Schedule Property for plaintiffs 10/18th share and put the plaintiffs in possession of a separate 10/18th share in the suit schedule property.
- (3) To award cost of the suit.

For Plaintiff : Mr.N.K.Vanan
for Mr.K.R.Ramesh Kumar
For Defendants : Mr.M.Venkatramana
for Sugumar R.Rajulu

JUDGMENT

This Civil Suit has been filed for seeking the relief to pass a preliminary decree for the plaintiffs 10/18th share in the Suit Schedule property and to appoint an Advocate Commissioner to suggest a mode of division of the Suit Schedule Property for plaintiffs 10/18th share and make the plaintiffs in possession of a separate 10/18th share in the Suit Schedule property.

2. The brief averments of the plaint are as under:

The plaintiffs are husband and wife. Defendants 1 to 7 and the 2nd plaintiff are children of one Parameswari Ammal and Kalasami Nadar.



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Defendants 8 to 10 are the wife and children of K.Jothi, who is the predeceased son of Parameswari Ammal. The suit property is a piece of land with an extent of 4157 sq.ft., comprised in Old survey No.1158, CC.No.1825, R.S.No.2730/1 (part), New R.S.No.2730/19 as per patta), Tondiarpet Village, Fort-Tondiarpet Taluk, together with a superstructure thereon, which is fully described in the schedule belonged to the 1st plaintiff and the mother of the 2nd plaintiff namely Parameswari Ammal. The lease hold rights in the land and the superstructure were jointly sold by the legal heirs of one A.S.Kanniappan Nadar in favour of the 1st plaintiff one Parameswari Ammal by virtue of a sale deed dated 08.01.1981. The recitals of the sale deed would show that the 1st plaintiff had paid the entire sale consideration and the 2nd plaintiff's mother who was not an earning member. The original owner of the site of the suit property sold their rights in the lands to the 1st plaintiff one Parameswari Ammal vide sale deed dated 07.01.1981. It was the 2nd plaintiff who had paid the entire sale consideration.

2.1. The 2nd plaintiff was working as an accountancy consultant and he has good reputation. He has also won a sum of Rs.1,00,000/-[Rupees one



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lakh only] in a raffle conducted by the government. Since the said amount was spent for family expenses, he borrowed a sum of Rs.41,000/-[Rupees forty one thousand only] from Nataraja Nadar by mortgaging the suit property by virtue of a mortgage deed dated 08.01.1981. As against the mortgaged property, the mortgagors do not have any right, title or interest over the suit property. The 2nd plaintiff has also availed hand loans for conducting marriages of his brothers. Since the hand loans got accumulated he availed another mortgage loan of Rs.30,000/-[Rupees thirty thousand only] by virtue of a mortgage deed dated 15.07.1985. The said mortgage was executed by the plaintiffs along with the parents and brothers of the 2nd plaintiff.

2.2. The mortgage loan was duly discharged by the 2nd plaintiff on 16.02.1991. The son of Nataraja Nadar had executed a receipt dated 28.02.2017 in proof of discharge of the aforesaid mortgage loan. The father of the 2nd plaintiff namely Kalasami Nadar predeceased his wife Parameswari Ammal, on 30.01.1994 and the said Parameswari Ammal also died intestate on 17.11.2010. Subsequent to the death of Parameswari Ammal half of the suit property devolved upon her children, who are the 2nd plaintiff and the defendants 1 to 7



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and the legal heirs [Defendants 8 to 10] of her predeceased son Jothi.

2.3. After the demise of the Parameswari Ammal, the 1st plaintiff who is the co-owner of the property was desirous of effecting a partition of the Suit Schedule property. The 2nd plaintiff is one of the legal heirs of Parameswari Ammal who is entitled to 1/9th share in the half share of the Suit Schedule property, but the defendants did not come forward to effect partition. Hence the plaintiffs have filed the suit for partition after effecting a pre litigation legal notice. Hence the preliminary decree should be passed for plaintiffs 10/18th share in the suit schedule property.

3. The written statement and counter claim filed by the defendants 1 to 5, 7 & 10 is in brief:

The suit property as shown in the plaint schedule is a joint family property of one Kalasami Nadar purchased out of the joint efforts and earnings of all the family members of the Kalasami Nadar. Hence all the children of Kalasami Nadar are entitled to a share each in the Suit Schedule property. The superstructure of the suit property was mortgaged by virtue of a mortgage deed



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in document No. 2809/1973 by the predecessors in title. The suit property was also subjected to a court decree in OS.No.7584/1972 on the file of the 4th Assistant City Civil Court at Chennai under the City Tenants Protection Act. Under such circumstances, the said Kalasami Nadar and his family members came forward to purchase the suit schedule property through two sale deeds, one for the superstructure and another one for lease hold right over the land. The Kalasami Nadar along with his wife, 1st and 2nd plaintiffs, 1st and 2nd defendants and the deceased son Jothi borrowed money to the tune of Rs.14,500/-[Rupees fourteen thousand and five hundred only] from one Nataraja Nadar to purchase the suit scheduled property and further borrowed another sum of Rs.26,500/- [Rupees twenty six thousand and five hundred only] on 21.01.1981 and mortgaged the suit property as security. It is only with these amount borrowed from one Nataraja Nadar the property itself has been purchased.

3.1. The sale deeds for the suit property were executed jointly in the names of the wife of Kalasami Nadar namely Parameswari Ammal and the elder most daughter-in-law of the family namely Krishnaveni Ammal i.e. the



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1st plaintiff. This was only due to the sentimental reasons. Both the Parameswari Ammal and Krishnaveni Ammal were illiterate women with no personal income of their own. The amounts were mobilised by the family members through the above mentioned borrowings. The sale deed for the land of the suit schedule property was purchased on 07.01.1981 by way of a registered sale deed and on the following day i.e 08.01.1981 by virtue of another registered sale deed, the superstructure of the suit property was also purchased. Since the sale deed and the mortgage deed were executed in one and the same day, there is averments about the mortgage in the sale deed.

3.2. The recitals of the mortgage deed and the conduct of the parties would show that the property has been purchased through joint family income and the borrowings were also settled by the family members. The joint family members were also running a gunny bags business under the name and style of M/s.Kaleeswari Gunny Stores at No.6, N.N.Garden, 7th Lane, Old Washermanpet, Chennai-600 021. The income from the gunny bag business was utilized to settle the debts incurred at the time of purchasing the suit property.



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3.3. The 3rd defendant was already married in the year 1980 and she contributed her ten sovereigns of gold jewels to raise money for the purchase price. A sum of Rs.10,000/-[Rupees ten thousand only] was also borrowed from one M.Veluchamy who was the sister's son of the said Parameswari Ammal. The 8th defendant had also given her ten sovereigns of gold jewels for the debts incurred for the purchase of the suit property. The 2nd defendant had also contributed a sum of Rs.65,000/-[Rupees Sixty Five thousand only] which were taken out from his Rs.1,00,000/- chit. Till date there is no dispute among the family members and they are living together.

3.4. In fact, the plaintiff's five daughters marriage were performed with the marriage contribution given by the joint family members. But the plaintiffs have developed some intentions to grab the suit property. The 2nd plaintiff along with his brothers and sisters, defendants 1 to 7 along with the legal heirs of the deceased brother Jothi are entitled to 1/9th share each. The defendants denied that the half share of the mother devolved upon the plaintiffs and the defendants. The plaintiffs claim of half share for the 1st plaintiff and 1/9th share in the other half share for 2nd plaintiff is not correct. Hence the relief



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of declaration that the suit property is a py of Kalasami Nadar and consequent injunction restraining the plaintiffs from interfering the same and also passed a preliminary decree of 24/27th share of the defendants should be granted.

4. The reply statement filed by the plaintiffs is in brief:

It is false to claim that the defendants are entitled to 24/27th share in the suit property. The plaintiffs are jointly entitled to 10/18th share and the defendants are eligible to the remaining 8/18th share in the suit property. The sale was made in the name of the 1st plaintiff for sentimental reason. It is equally false to state that the mortgaged loans are discharged by the joint family members. The counter claim is devoid of merits and it is liable to be dismissed.

5. On the basis of the above pleadings and materials available on record, this Court has framed the following issues:

- “(1) whether the plaintiff is entitled for partition as prayed for?”*
- “(2) Whether the suit property is a joint family property or self acquired property of Kalaisami Nadar?”*
- “(3) Whether the defendants are entitled to any share?”*



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(4) *To what relief?*

6. However, the issues are now reframed as to the specific entitlement of share of the plaintiffs and it is as under:

(i) Whether the plaintiffs are entitled to get 10/18th share in the suit schedule property?

(ii) whether the suit schedule property is a joint family property as alleged by the defendants?

(iii) whether the defendants are entitled to 24/27th share as claimed by them in the counter claim?

(iv) Whether the plaintiffs are entitled to get a preliminary decree as prayed ?

(v) Whether the defendants are entitled to get a preliminary decree as prayed by them in the counter claim?

(vi) To what relief if any?

7. During the course of the trial, on the side of the plaintiffs, the plaintiffs examined themselves as PW.1 and PW.2 and Ex.P1 to P15 were



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marked. On the side of the defendants, 1st and 2nd defendant examined themselves as DW.1 and DW.2 and Ex.D1 to Ex.D21 were marked.

8. The learned counsel for the plaintiffs submitted that the suit property is a self-acquired property of the 1st plaintiff and the mother of the 2nd plaintiff in whose name the sale deeds dated 07.01.1981 and 08.01.1981 have been made. The father of the 2nd plaintiff was working as a cooly in the gunny bag store belonged to a third party and hence there is no joint family business as alleged by the defendants. There is no iota of evidence to show that the other family members have also contributed to the sale consideration to purchase the suit properties. The defendants have made a false claim that they are entitled to 24/27th share in the suit property. The mortgage deed executed in favour of the Nataraja Nadar itself clearly states that the defendants did not have any right in the property and they have been formally included in the execution of the mortgage deed. The defendants did not produce any documents to show that the property have been purchased through the joint family income. Since there is no joint family business there is no source for any joint family income. The defendants did not prove the claim made by them. As the legal heirs of the



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deceased mother, the 2nd plaintiff and the defendants and the legal heirs of deceased Jothi are entitled to get only 1/18th share in the suit property.

9. The learned counsel for the defendants submitted that even though the sale deed has been registered in favour of the 2nd plaintiff's wife and one Parameswari Ammal, the sale consideration was not borne by Parameswari Ammal or the 1st plaintiff. The property has been purchased only with a joint contribution made by all the family members and hence, the plaintiffs alone cannot claim 10/18th share in the suit property. The mortgage loan in respect of the suit property also was discharged only with the financial support given by the other family members and hence, the plaintiffs cannot claim any exclusive right as though the 1st plaintiff has paid the sale consideration by himself. Hence, if the counter claim has to be allowed by passing a preliminary decree by allotting 24/27th share in favour of the defendants.

Discussion:

10. The relationship between the parties is admitted. The 1st plaintiff is the wife of the 2nd plaintiff. The 2nd plaintiff and defendants 1 to 7 and one



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predeceased Jothi are the children of one Parameswari Ammal and Kalasami Nadar. The defendants 8 to 10 are the legal heirs of deceased Jothi. The suit property has been purchased by virtue of a two sale deeds dated 07.01.1981 and 08.01.1981 which have been marked as Ex.P1 and Ex.P2 respectively. The 1st plaintiff is the eldest daughter in law of the family and the 2nd plaintiff is the eldest son of his parents Kalasami Nadar and Parameswari Ammal. From Ex.P1 and Ex.P2 sale deeds, it is stated about the compelling circumstances due to which the property is sold to the 1st plaintiff and the Parameswari Ammal. According to the defendants the family members were ready to purchase the suit property and in fact they have also contributed money but out of respect and affection the property was purchased in favour of the 1st plaintiff and their mother Parameswari Ammal. The sale deeds were of the year 1981 and in fact a mortgage deed was also executed on 08.01.1981 itself. In the mortgage deed which is marked as Ex.P3 itself under clause 9 the following recitals are mentioned:

“9.எங்களில் 3 முதல் 7 வரையுள்ள நபர்களுக்கு ஷெடியூல் சொத்தில் எந்தவிதமான உரிமையும் கிடையாது, எனினும் தங்கள் விருப்பத்தின் பேரில் அவர்களையும் இதில் முன் ஜாக்கிரதையாக பார்ட்டிகளாகச் சேர்த்துள்ளோம்.”



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11. The above clause means to say that the executants 3 to 7 of the mortgage deed do not have any right over the properties subjected to mortgage, but they have been added in the deed only as formal. The said executants 3 to 7 are the husband and the sons of the Parameswari Ammal. So it is made clear on behalf of the plaintiff that the property has been mortgaged just to avail loan for the purpose of raising money for the sale consideration. Had the defendants supported and extended the financial assistance for purchasing the suit property there would not have been any necessity to mortgage the property for raising money. In fact the defendants 1 and 2 who were examined as DW.1 and DW.2 themselves have stated in their evidence that their father was employed as a coolie at Mayandi Nadar Ganesh Stores. However DW.1 had stated that he was also working as a daily coolie there but subsequently started gunny bag business.

12. Despite it is claimed by DW.1 that all the brothers were the partners of the Kaleeswari Gunny bag business, the fact remains that Kaleeswari is the daughter name of the 2nd plaintiff. The defendants were not able to produce any documents to show that the said gunny bag business stood



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in the name of all the defendants and the business was done by them jointly. No documents have been produced by the defendants to show that the said Kaleeswari gunny bag business was carried out by all the family members and that it was a partnership firm.

13. The 2nd defendant, who was examined as DW.2 was confronted with Ex.P3 - mortgage deed dated 08.01.1981. During that course DW.2 has admitted that under clause 9 of Ex.P3, it has been categorically stated that the father and other sons of Paramewari Ammal do not have any right in the property but they have been added as just formal parties to the document. Despite DW.1 has admitted the same he has stated that he did not read the contents of the documents but signed it at the request of the 2nd plaintiff.

14. As per Section 91 of the Indian Evidence Act if any disposition of a property is reduced into writing in a form of a document, the document has to be proved as proof of the said transaction. The plaintiff has produced Ex.P1 and Ex.P3 to show that the suit property was produced only for the benefit of the 1st plaintiff and his mother and that the other defendants do not have any right in



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the same. The defendants who plead the contrary has got the burden to show that they had different intention while executing Ex.P3 and that they did not read the document before affixing their signatures.

15. The defendants did not produce either direct or secondary evidence to substantiate their above contention. So there is no difficulty for the court to arrive at a conclusion that the recital in Ex.P3 is true and valid and only by accepting the facts stated therein, the defendants have affixed their signature on the same. When the plaintiffs have established that the suit properties have been purchased in the name of the 1st plaintiff and the the mother of the 2nd plaintiff by availing loan and thereby raising money without the aid of the defendants, the burden is on the defendants to prove the contrary.

16. So far as the plaintiffs are concerned their burden gets discharged by producing the original documents on which the plaintiffs base their claim and proving the same as a valid one. It is not the contention of the defendants that Ex.P1 and Ex.P2 themselves are invalid. But their only contention is that though the sale deed was registered in the name of the 1st plaintiff and their



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mother, the sale consideration was contributed from and out of the joint family income.

17. The 1st and 2nd defendants who are examined on behalf of the defendants, have stated in their evidence that the family owns separate properties in the name of some of the brothers. When DW.2 was questioned about the property in the name of the 10th defendant at Sorapet Puzhal, DW.2 did not state that the said property was also a joint family property. The 10th defendant is the son of predeceased son Jothi. If the contention of the defendant is true, then the 2nd plaintiff, the defendants and the legal heirs of the deceased Jothi should have been continuing the joint family business and all those properties stand in the name of any member of the family ought to have been considered as a joint family property. The defendants do not state all the properties stand in any member of the family as rather they joint family. But they rather have selectively claimed that the suit property alone as the joint family property. Further in the evidence of DW.1 and DW.2, they were not able to say, when the alleged joint family business started and when it was closed. It is further stated that there is no partnership agreement between themselves in



respect of any joint business.

18. The 1st plaintiff who was examined as PW.1 has stated in his evidence that they have been living as separate families even during the life time of Kalasami Nadar and Parameswari Ammal and they have been paying separate rents for their respective portions as well. She has also stated that her husband alone had contributed money to discharge the mortgage and in fact the property was mortgaged to meet out the sale consideration. The evidence of PW.1 tallies the fact that the sale deed and the mortgage deed have been registered in one and the same day. The defendants were not able to establish that there was a joint family business and in which all the children of the Kalasami Nadar were partners and they have been living only as a joint family.

19. In fact DW.1 has given a very categorical admission that the expenses of each family was borne by each of the respective family members. In such circumstances, the claim about the joint family appears to be just an imaginary invention of the defendants. In fact some of the brothers were minors at the time of purchasing the property. Without proving that the property as a



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joint family property and that it has been purchased in the names of the 1st plaintiff and the mother of the 2nd plaintiff Parameswari Ammal just for name sake, the defendants cannot claim any share in the half of the suit property which absolutely belonged to the 1st plaintiff. So the defendants' entitlement to the suit property would be only in respect of the half share of Parameswari Ammal who is their mother and to whom they are the legal heirs along with the 2nd plaintiff. The 2nd plaintiff, the defendants 1 to 7 and the legal heirs [defendants 8 to 10] of the deceased Jothi are entitled to 1/9th share in half share of Parameswari Ammal. That means they are entitled to 1/18th share each in the suit property. **Thus the issues No.1 to 4 are answered .**

20. Hence the plaintiffs are entitled to get preliminary decree for partition only in respect of 10/18th share in the suit property and the defendants 1 to 7 are entitled to 1/18th share in the suit property and the defendants 8 to 10 together are entitled to 1/18th share each in the suit property. **Thus the issues Nos.5 & 6 are answered.**

21. In the given circumstances of the case, the parties are not entitled



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to any other relief other than the relief already granted. **Thus the issue No.7 is answered.**

In the result, the suit is **decreed** and the preliminary decree is passed only in respect of 10/18 share of the plaintiffs in the suit property and the counter claim of the defendants are **partly allowed** and a preliminary decree is passed in respect of their 8/18 share in the suit property. No cost.

09.10.2023

Index : Yes / No
Speaking order / Non-speaking order
Internet: Yes/No
Neutral :Yes/No
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APPENDIX

I. Witnesses :

<i>Plaintiff :</i>	
PW.1	C.Krishnaveni Ammal
PW.2	K.Cheliah Nadar
<i>Defendant :</i>	
DW.1	K.Palraj
DW.2	K.Dhanasekarn

II. Exhibits :

Sl. No	Exhibits	Description of documents
1	P1	The Original Sale Deed dated 07.01.1981 registered as Doc.No.20 of 1981, at SRO Royapuram.
2	P2	The Original Sale Deed dated 08.01.1981 registered as Doc.No.29 of 1981, at SRO Royapuram.
3	P3	The Original Mortgage Deed dated 08.01.1981 registered as Doc.No.798 of 1981, at SRO Royapuram.
4	P4	The Original Mortgage Deed dated 15.07.1985 registered as Doc.No.1250 of 1985, at SRO Royapuram.
5	P5	(series) (5Nos) is the Xerox copies of E.B.Card (compared and verified with original).
6	P6	(series) (5Nos) is the Xerox copies of CMWSSB Card (compared and verified with original).
7	P7	The copy of Death certificate of Parameswari Ammal dated 17.11.2010.
8	P8	The original cancellation of Mortgage Deed dated 06.10.2016 registered as Doc.No.3709/2016 at SRO Royapuram.
9	P9	The copy of Legal Heirship Certificate of Parameswari Ammal dated 18.11.2016 (compared and verified with original)



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Sl. No	Exhibits	Description of documents
10	P10	The office copy of legal notice issued by the 1st plaintiff to the defendants dated 01.12.2016.
11	P11	the original reply notice issued by the defendants dated 15.12.2016.
12	P12	the original Discharge receipt dated 28.02.2017 registered as Doc.No.559 of 2017 at SRO Royapuram.
13	P13	(series)(2Nos) is the original Encumbrance certificate dated 16.08.2017.
14	P14	The series of corporation tax receipts are marked as Ex.P14 (8Nos)(marked during DW1 cross examination)
15	P15	Copies of Chennai Metropolitan Water Supply and Sewerage Board receipts (8 NOs) (Marked during DW1 cross examination)
16	D1	Original marriage invitation of C.Kaleeswari dated 18.10.1993 (marked during PW.1 cross examination)
17	D2	Original marriage invitation of C.Elavarasi's dated 09.09.1996 (marked during PW.1 cross examination)
18	D3	Original marriage invitation of C.Jayanthi's dated 12.03.2000 (marked during PW.1 cross examination)
19	D4	Original marriage invitation of S.K.Eswari's dated 17.06.2007 (marked during PW.1 cross examination)
20	D5	Original marriage invitation of C.Gunavathi's dated 12.06.2013 (marked during PW.1 cross examination)
21	D6	The certified copy of the sale deed Doc.No.20/1981 dated 07.01.2013 (marked during PW.1 cross examination).
22	D7	The certified copy of the Sale Deed Doc.No.29/1981 dated 08.01.1981 (marked during DW.1 Chief examination)
23	D8	The certified copy of the Mortgage deed Doc.No.798/1981 dated 08.01.1981.
24	D9	The certified copy of the Mortgage deed Doc.No.1250/1985 dated 15.07.1981
25	D10	The copy of the Aadhaar card of Palraj.
26	D11	The copy of the Aadhaar card of K.Dhanasekaran.



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Sl. No	Exhibits	Description of documents
27	D12	The copy of the Aadhaar card of K.Srinivasan.
28	D13	The copy of the Aadhaar card of Ramesh
29	D14	The copy of the Aadhaar card of Kamesh
30	D15	The copy of the Electricity consumption card No.11/020/757 dated 26.04.2019.
31	D16	The copy of the Electricity consumption card No.011-020-208 dated 29.08.2019.
32	D17	The copy of the Electricity consumption card No.011-020-967 dated 26.04.2019.
33	D18	The original Electricity Consumption Card No.11-20-592 dated 25.08.2009
34	D19	The original Property Tax Arrers Notice dated 03.10.2017.
35	D20	The original CMWSSB Demand Notice dated 02.01.2018
36	D21	The original Property Tax Receipt dated 25.01.2018.

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jrs

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