



Tr.C.S. No.3 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 17.12.2024

PRONOUNCED ON: 18.12.2024

CORAM:

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

Tr.C.S.No.3 of 2022

1.A.P.M Gomethakavel

2.M.Yuvaraj Saravanan

...Plaintiffs

...Vs...

1.Gowri,

2.The Thasildar,
Perambur Pursaiwalkam Taluk,
Perambur, Chennai - 11.

3.The District Collector,
Chennai Collectorate, Chennai District.

4.The Sub-Registrar,
The Sub-Registrar Office, Sembium, Chennai.

5.V.Manoharan

....Defendants



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Prayer:- This Civil Suit is filed under Order IV Rule 1 of Original Side Rules read with Order VII Rules 1 and 2 of CPC, for the reliefs as stated below:

a) To declare that the Plaintiffs are the absolute owners of the property situated at Old.Door.No.93/1, New.Door.No.32, Market Street, Sembium, Permabur, Chennai- 600 011 comprised in T.S.No.87/2, Block No.1, Siruvallur Village, Purasawalkam-Permabur Taluk, Chennai- 600 011 which is morefully described in the schedule of this Plaint.

b)Consequentially permanent Injunction restraining the 1st Defendant, her men, agent, representative, assigns, etc not to dispossess the plaintiffs from the suit except under due process of law.

c) To declare that the Plaintiffs herein are the Class-II Legal Heirs of deceased Sri.Gangadharan under Hindu Succession Act who died intestate on 10.08.2017 Chennai.

d) Mandatory Injunction directing the 2nd Defendant herein to issue a Legal Heir Certificate in favour of the Plaintiffs herein in accordance with the prayer of declaration granted by this Hon'ble Court.

e) Mandatory Injunction directing the 4th Defendant to make necessary entries in the index and register maintained before the Sub-Registrar office at Sembium in respect of the Declaration of title and ownership granted by this Hon'ble Court in favour of the Plaintiffs herein.



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f) Cost of the suit or g) any other orders as this Hon'ble Court deems fit and proper to the circumstances of the case and thus render Justice.

For Plaintiffs : Mr.C. Shankar

For Defendants :Set Exparte

JUDGEMENT

This Civil Suit is filed, seeking a relief as prayed therein.

2. The case of the Plaintiff in a nut shell is as follows:-

a. The property bearing Land and Building situated at Door No: 107/108, Old.No.32, New. No.93/1, Market Street, Sembium, Chennai-600 011, Siruvallur Village having in a extent of 3604.6 Sq.ft was originally belong to one Sri.Deivasigamani Achari who had purchased the property under a vide Sale Deed dated 23.03.1928, registered as Document No. 428 of 1928 before the Sub Registrar Office at Sembium.

b.Subsequent to the demise of Sri Deivasigamani achari his sons Sri.Sundar achari and Sri.Nataraja Achari had jointly inherited the above mention property and during the course of joint ownership the said



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Sri.Sundar achari and Sri. Nataraja Achari had entered into a Partition Deed on 06.10.1950 and registered the deed as Document No. 2124 of 1950 before the Sub Registrar Office at Sembium. In pursuance of the Partition Deed the above mention property was allotted in favour of Sri.Sundar achary and he was in the absolute ownership of the property until his life time and died intestate leaving behind his wife Smt.Mannikammal and two sons namely Sri.S.Gangadharan and S.Mohan and thereafter Smt.Manikammal died on 25.02.1974 leaving behind the said S. Gangadharan and S.Mohan as Co-owners of the above mentioned property.

c. During the Co-ownership of the said property the Plaintiff 's father Sri.S.Mohan executed a Release Deed dated 24.06.1974 in favour of his elder brother Sri.S.Gangadharan and registered the Deed as Document No. 2107 of 1974 before the sub Registrar Office at Sembium and wherein the Plaintiffs father had relinquished his $\frac{1}{2}$ share in Property in favour of his Sri.S.Gangadharan and in pursuance of the Release Deed the said S.Gangadharan became the absolute owner of the entire property admeasuring above 3604.6 Sq.ft at Door No: 107/108 Old No.32, New No.93/1, Market Street, Perambur, Chennai 600-011 and during the course



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of ownership the said S.Gangadharan conveyed a total extent of 512 Sq.ft under vide three Sale Deeds dated 29.03.1995, 14.05.1997, 24.05.2002 respectively registered as Document No.1843 of 1995, 2830 of 1997 and 3607 of 2002 before the Sub Registrar Office at Sembium and owned the balance extent of 3092 Sq.ft. in the suit schedule property.

d. During the Course of Ownership of the Suit property the Title Owner Sri.S.Gangadharan died intestate on 10.08.2017 leaving without any Legal heirs to him and his wife Smt. Umamaheswari predeceased to him on 26.07.2014 at Chennai. The said S.Gangadharan and Umamaheswari did not have any children and there is no any Class I Legal heirs to them and moreover the Plaintiffs father S.Mohan, the Brother of S. Gangadharan died on 14.10.1995 at Chennai. Subsequent to the demise of S. Gangadharan the suit property is in the absolute possession of the Plaintiffs herein since they are the exclusive Class II Legal heirs to the deceased S.Gangadharan and they exclusively maintaining and collecting Rents from the Suit Property till this date without any encumbrances. The first Defendant herein is their mother who is rivalry claiming ownership over the suit property which is unsustainable either in Law or facts since the Plaintiffs herein are the Class II Legal heirs



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of the deceased S.Gangadharan who are enclosed under the Hindu Succession Act and in the absence of Class I Legal heirs to the deceased Gangadharan and these Plaintiffs would fall into the category of "Brother's sons" under Class II (iv) of Hindu Succession Act.

e.In these circumstances and proposition of Law the Plaintiffs are entitled for a declaration of Title in respect of suit property against the First Defendant herein under the statutory Law. Further, the plaintiffs have submitted an application on 25.04.2018 before the Thasildhar, Perambur-Purasaiwalkam for the Legal heir Certificate of the Deceased S.Gangadharan in favour of them but the request was rejected by the Thasildhar, Perambur Purasaiwalkam Taluk under his Vide Letter dated 10.05.2018 so the Plaintiffs have no other option except to approach this Hon'ble Court for the appropriate remedy. In pursuance of the above mentioned facts they are entitled for the prayer of Declaration and Permanent injunction as prayed in the suit and since the balance of the convenience is in favour of the Plaintiffs herein this Hon'ble Court may be pleased to decree the suit as prayed herein.



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3.In the written statement filed by the 5th defendant , it is as

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follows:-

a) S. Gangadharan and Uma Maheswari did not have any children and there is no any Claim I legal heirs to them and more over the Plaintiffs' father S. Mohan the brother of S. Gangadharan died on 14.10.1995 at Chennai are matter of record. During the life time of Smt.G. Uma Maheswari and Gangadharan they have adopted the 5th Defendant as their own son since they have not any children born to them. From the date of adoption the 5th Defendant is the son of Gangadharan and the name of the 5th Defendant were mentioned with the initial of G. Manoharan was reflected in the Voter I.D. Card, Family Ration Card and Aadhaar Card and other relevant records and hence of entitle of ½ share is entitled for the Plaintiffs in the suit schedule mentioned property does not arise. On this ground also the suit is liable to be dismissed.

b). The 5th Defendant states that after the death of his father Gangadharan he is owning and possessing the above said property as absolute owner having right and title to the property since the above said Gangadharan during his life time have executed a Will and bequeathed the suit schedule mentioned property absolutely and given full right of



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collecting the rents from the tenants and hence question of claiming rivalry ownership does not arise since he is the one and only absolute owner of the suit mentioned property. When the 5th Defendant the son of late Gangadharan/Class-I legal heir is very much alive, the Plaintiffs are not entitled for any share in the property as Class-II legal heir. More over the Plaintiffs father S.Mohan have executed a Release Deed in favour of the 5th Defendant's father Gangadharan in respect of his half (1/2 share) in the suit schedule mentioned property. Hence the Plaintiffs is not having any right to claim any share in the suit schedule mentioned property or collecting rent from the tenants. The Plaintiffs have themselves admitted that they are the Class-II legal heir. Class-II legal heir is not entitled for any right when the Class-I legal heir is very much alive. The 1st Defendant is also not entitled for any share in the suit schedule mentioned property.

c).After the life time of Gangadharan, the 5th Defendant is in absolute possession and enjoyment of the suit schedule mentioned property till date. The father of the 5th Defendant have executed the Will during his life time. He intends to register the Will. But, however unfortunately the father of the 5th Defendant is died on 10.08.2017. During his life time the father of the 5th Defendant has lived with him. The 5th Defendant only



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have taken care of his father Gangadharan till his date of death. When questioned the Plaintiffs have threatened the 5th Defendant to give half (1/2) share in the suit schedule mentioned property and also to give income derived from rent. When the same desisted they beat the 5th Defendant severely and threatened to take his life with the help of rowdies. Afraid of threat of the Plaintiffs when the 5th Defendant lodged a Police Complaint before the nearby Police Station they refused to receive the 5th Defendant's Complaint since the 1st Plaintiff is working in the Police Station. Using his influence he is preventing the Police Authorities from receiving Complaint from the 5th Defendant. The 1st Plaintiff is using his post and power collecting the monthly rents from the tenants under threat and coercion. Afraid of the threat of the 1st Plaintiff, the tenants are also paying the monthly rents to the 1st Plaintiff. The 5th Defendant states that he has filed a case bearing O.P.No.689 of 2019 before the Hon'ble High Court of Judicature at Madras and the same converted into T.O.S. and the same is pending. Hence, the suit is liable to be dismissed in limine.

4. The Defendants were set exparte since there was no representation on their side.



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5.The learned counsel for the plaintiffs submits that subsequent to the demise of S. Gangadharan, the Suit property was completely possessed and enjoyed by the Plaintiffs herein as Class II legal heirs of him accordance with Hindu Succession Act, since he and his wife died without leaving any Class I legal heirs.

6.It has been further submitted that the 5th Defendant presented an alleged Will dated 06.02.2017 said to be executed by Late S.Gangadharan for the grant of letters of Administration under O.P.No.689 of 2018 and the said O.P. was converted as T.O.S.No. 13 of 2020 before this Hon'ble Court due to caveat filed by the plaintiffs and in view of the order passed by this Hon'ble Court T.O.S.No. 13 of 2020 and Transfer C.S.No.3 of 2022 were jointly tried before this Hon'ble Court. This Court by order dated 29.04.2024 in T.O.S.No.13 of 2020 dismissed the suit since there was no any representation on the side of the Plaintiff/5th Defendant herein. So far the 5th Defendant have not restore the T.O.S.No.13. Of 2020. Hence the Judgment dated 29.04.2024 stands valid and reached finality in the Court of law.



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8. The learned counsel for the plaintiffs further submits that in such circumstances admittedly the title of the Plaintiffs over the suit property as Class II legal heirs said S.Gangadharan has been categorically proved under the Exhibits Marked in above mentioned Suit. In support of his arguments, he relied upon the Judgment reported in (2019) 17 SCC 704. Hence the plaintiffs are liable for a Judgment and Decree in respect of the declaration and consequential permanent injunction on the Suit property as prayed in this suit.

9. Heard the learned counsel for the plaintiffs and there was no appearance on the side of the defendants and they were set exparte.

10. On perusal of the records, it is seen that the suit property is originally belonged to one Late S.Gangadharan vide Ex.P3- Certified copy of the Release Deed Registered as Doc.No.2107 of 1974 dated 24.06.1974 who died on 10.08.2017 and his wife ie. Uma Maheswari predeceased him on 26.07.2014 without any legal heirs. In the absence of Class I Legal heirs to the deceased S.Gangadharan, these Plaintiffs are claiming the suit property under the category of "Brother's sons" under Class II (iv) of Hindu

Succession Act. Further, 1st defendant being the wife of brother of Late



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S.Gangadharan cannot be considered as Class-II legal heirs of Late.

S.Gangadharan and Late Uma Maheswari and she cannot claim the suit schedule property belonged to Late. S.Gangadharan.

11. It is also seen from the records that the 5th defendant filed O.P.No.689 of 2018 seeking for the grant of letters of Administration under the alleged Will dated 06.02.2017 to have been executed by Late S. Gangadharan and the said O.P. was converted as T.O.S.No. 13 of 2020 before this Court as the plaintiffs contested the suit. This Court by order dated 29.04.2024 dismissed the same since there was no representation on the side of the Plaintiff/5th Defendant herein. So far the plaintiff/ 5th Defendant herein has not taken any steps to restore the said T.O.S.

12.Having considered the facts and circumstances of the case and also considering the oral and documentary evidence placed on the side of the plaintiffs, ie. Ex.P1 to Ex.P11 and PW.1 was examined, this Court is of the view that the plaintiffs have proved the suit claim and hence, the Plaintiffs are entitled for the reliefs, as prayed for.



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13. Accordingly, this Civil suit is decreed, as prayed for No costs.

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Index:Yes/No

Web:Yes/No

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1. P.W.1 – M.Kalyanaraman

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is Certified copy of the Sale Deed Registered as Doc.No.429 of 1928 dated 23.03.1928.

2. Ex.P2 is Certified copy of the Sale Deed Registered as Doc. No.2124 of 1950 dated 06.10.1950.

3. Ex.P3 is Certified copy of the Release Deed Registered as Doc.No.2107 of 1974 dated 24.06.1974.

4. Ex.P4 is Certified copy of the Sale Deed Registered as Doc.No. 1843 of 1995 dated 29.03.1995

5. Ex.P5 is Certified copy of the Sale Deed Registered as Doc.No.2830 of 1997 dated 14.05.1997

6. Ex.P6 is the Certified copy of the Sale Deed Registered as Doc.No.3607 of 2002 dated 24.05.2002

7. Ex.P7 is the Online copy of the Death Certificate of S.Mohan dated 14.10.1995

8. Ex.P8 is the Online copy of the Death Certificate of Gangadharan dated 10.08.2017.

9. Ex.P9 is the Xerox copy of Application submitted before the Tahsildhar dated 25.04.2018

10.Ex.P10 is the Original of Rejection letter issued by the Tahsildhar, Perambur, Pursaiwalkam taluk dated 10.05.2018.

11.Ex.P11 is the Online copy of Death certificate of Uma Maheshwari dated 26.07.2014.



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3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

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A.A. NAKKIRAN, J.

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