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C.S.No.819 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.09.2023

Delivered on : 31.01.2024

CORAM

THE HONOURABLE Mr. JUSTICE A.A. NAKKIRAN

C.S.No.819 of 2015

1.T.S.Prem Kumaar

2.S.Prem Kumari @ Ammu

...Plaintiffs

Vs

1.S.Karpagam

2.S.Paramasivam @ Ravi

3.S.Balaji

4.Usha Raju

5.Miss.Monisha Raju

D/o.Late S.Manika Raju

6.Miss.Rithika Raju,

D/o.Late S.Manika Raju, minor represented
by mother/natural Guardian Mrs.Usha Raju,
the 4th defendant

...Defendants



This Civil Suit is preferred under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 of C.P.C. Praying:

a) For partition of the schedule mentioned joint family suit property by metes and bounds and to allot for separate possession and enjoyment of the plaintiffs, the ground floor of the superstructure and one-half undivided share of the land area from and out of the total extent of the suit property,

b) For appointing an Advocate Commissioner to divide the schedule mentioned property by metes and bounds and to allot to the plaintiffs, their respective one-half share with the ground floor,

c) For a permanent injunction, restraining the defendants 1 to 6, their men, agents and others from alienating, charging, selling or otherwise in any way encumbering the respective plaintiffs' one-half share of the schedule mentioned property to any third party or parties in contrast to the pre-emptive right of the plaintiffs;

d) for costs of the suit; and

e) such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Plaintiffs : Mr.S.Mohan Das

For Defendants : Mr.J.Bijai Sundar for D1 to D3

:Mr.Shabnam Banu for D4 to D6

JUDGMENT

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This Civil Suit has been filed for the following reliefs:

“(a)For partition of the schedule mentioned joint family suit property by metes and bounds and to allot for separate possession and enjoyment of the plaintiffs, the ground floor of the superstructure and one half undivided share of the land area from and out of the total extent of the suit property,

(b)For appointing an Advocate Commissioner to divide the schedule mentioned property by metes and bounds and to allot to the plaintiffs, their respective one half share with the ground floor

(c)For a permanent injunction restraining the defendants 1 to 6, their men, agents and others from alienating, charging, selling or otherwise in any way encumbering the respective plaintiffs one half share of the schedule mentioned property to any third party or parties in contrast to the pre-emptive right of the plaintiffs

(d)for costs of the suit.”

2.The averments found in the Plaint, in brief, are as follows:

(i) The plaintiffs are the son and daughter of Late P.T.Sambandam and their paternal grandfather is Late K.Paramasivam. The Plaintiffs'



paternal Uncle late P.Shanmuga Sundaram is the younger brother of P.T.Sambandam and the younger son of late K. Paramasivam. The 1st defendant is the wife and the defendants 2 and 3 are the sons of late P.Shanmuga Sundaram. The 4th defendant is the daughter-in-law and the defendants 5 and 6 are the grand daughters of late P.Shanmuga Sundaram. The 4th defendant is the wife of S.Manika Raju and the Defendants 5 and 6 are the daughters of late S.Manika Raju, who is the deceased son of late P. Shanmuga Sundaram.

(ii) In the year 1958, the grandfather of the plaintiffs, namely, K.Paramasivam invested his own self acquired funds for the purchase of the suit property, situate at Door No.26 (Old Door No.16), Coats Road, T.Nagar, Chennai-600 017, in and by a Sale Deed dated 26.01.1958 registered as Document No.87/1958 of Book-I, Volume 117, Pages 384 to 389 at the Office of the Sub-Registrar, T.Nagar, Madras, ad-measuring one ground and 1240 sq.ft. or thereabouts, comprised in Survey No.3, Block No.1, more fully described in the Schedule. The whole family of the plaintiffs including all their relatives had believed that late K.Paramasivam owns the property situate at Coats Road, T.Nagar. Madras.



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(iii) As a matter of fact, the plaintiffs' grandfather late K.Paramasivam himself also believed that he is the absolute owner of the suit property which is situate at Door No.26 (Old No.16), Coats Road, T. Nagar, Madras, since he had invested the entire sale consideration for the purchase and told to his elder son, late P.T.Sambandam, the father of the Plaintiffs that after his demise, he should take the ground floor and that his younger brother P.Shanmuga Sundaram should take the first floor by partition and the land has to be taken in equal shares as one-half undivided share each which shows that the Plaintiffs' grandfather had believed that he is the sole and absolute owner of the suit property and the same has been purchased in his name. Even though late K.Paramasivam had a daughter, he had not intended to give her any share in the suit property. Both their grandfather and father always had a soft corner towards their younger son / younger brother, P.Shanmuga Sundaram. Even after the demise of the Plaintiffs grandfather on 20.12.1963, the Plaintiffs' father did not claim right to stay in the ground floor of the suit property. The Plaintiffs' father before his demise on 03.08.1996, had advised the Plaintiffs not to insist for partition of the suit property till the lifetime of his younger brother, and the



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Plaintiffs respected their father's desire and did not put up any claim for partition to their paternal Uncle, P. Shanmuga Sundaram. They did not raise the issue for partition with the defendants, even after the demise of their paternal Uncle, P. Shanmuga Sundaram on 30.04.2014, only out of respect to wait for the first year anniversary to be over. In the meanwhile, the plaintiffs were given to believe from very reliable sources that the defendants 2 and 3 are proceeding to negotiate for the sale of the suit property. When the defendants 2 and 3 were asked about it they denied which created suspicion in the minds of the plaintiffs. The plaintiffs' suspicion grew stronger when the defendants 2 and 3 refused to furnish a copy of the set of documents relating to the suit property and they gave some lame excuses that the documents are not traceable and that they have to search and that they were not aware whether their late father had placed them in Bank. The plaintiffs confirmed that the defendants are up to some mischief and immediately for abundant caution, a Public Notice was inserted in an English Daily and a Vernacular Daily on 06.04.2015. This was followed up with a Legal Notice through their Advocate dated 20.04.2015 calling upon the defendants to have the suit property partitioned and to furnish a copy of the set of documents relating to the suit



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property. The plaintiffs state that the defendants 1 to 3 on receipt of the legal notice came over to the 1st plaintiff's house on 21.04.2015 and prevailed upon him to withdraw the Public Notice and the Legal Notice, without saying anything and refusing to furnish a copy of the set of documents. When the 1st plaintiff asked as to why they are insisting him to withdraw, the defendants 1 to 3 abruptly walked out of the house and left without furnishing the copies of the documents and without even discussing anything.

(iv).The defendants 1 to 3 sent a reply dated 25.04.2015 through their Advocate to the 1st plaintiff, wherein they had for the first time declared that their husband/father late P.Shanmuga Sundaram is the owner of the suit property and that on 26.01.1958, it was purchased by P.Shanmuga Sundaram. This is not at all possible since Shanmuga Sundaram was then only about 28 years old, qualified to the School level only, dependant on his father had been only assisting his father and was not married. It is not at all possible for him to have purchased from his own funds, since he had no funds of his own. The entire sale consideration was paid by the Plaintiffs' grandfather, late K.Paramasivam as manifested in the Sale Deed dated 26.01.1958. The said Shanmuga Sundaram had stealthily misused



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the funds of his father K.Paramasivam and got the suit property registered in his name even without the knowledge of his own father, Paramasivam.

If the plaintiffs grandfather had been aware that the suit property was registered in his younger son, Shanmuga Sundaram's name, he would not have told his elder son, the plaintiffs father, P.T Sambandam as to how it has to be shared between the brothers or told all his close and distant relatives that he had purchased the suit property from his hard earned self acquired funds and how after his life time he has asked his sons to share the suit property between them. Further more, no father would discriminate and purchase the property for one of his sons and the plaintiffs' grandfather is definitely not in that frame of mind, He had no property of his own till then and how would be venture to purchase in the name of one of his sons, that too in the name of his younger ignoring the enter son. It is definitely unbelievable and impossible.

(v).The plaintiffs state that their grandfather, Paramasivam, had always believed that the property is owned by him, not being aware that he had been cheated by his own younger son, Shanmuga Sundaram, who had stealthily got it registered in his name without the knowledge of his own father. The plaintiffs state that their paternal Uncle, Shanmuga Sundaram,



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after the demise of the plaintiffs' father, P.T.Sambandam on 03.08.1996, had met the plaintiffs in common functions, but did not utter anything about the suit property, even though he knew that the whole family circle including all the close and distant relatives are only aware that the suit property belonged to the Plaintiffs' grandfather, Paramasivam. Likewise, the defendants 1 to 3 after the demise of their husband/father, Shanmuga Sundaram on 30.04.2014, had not uttered anything to the plaintiffs about the suit property. This is the manner in which Shanmuga Sundaram had cheated the plaintiffs' grandfather, and thereafter, their father, P.T.Sambandam. Since the suit property was purchased from and out of the funds of their grandfather Paramasivam, even though it had been falsely manipulated and created in the name of their paternal Uncle, Shanmuga Sundaram, is liable for partition and separate possession of the respective shares of the plaintiffs. The suit property cannot become the individual property of the father of the defendants 1 to 3 as alleged by the defendants, since the suit property had been purchased from and out of the funds of the plaintiffs' grandfather, Paramasiam. Hence, this Suit is filed.



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3.In the Written Statement filed by the defendants 1 to 3, it is averred as follows:

(i) The defendants 1 to 3 state that the plaintiffs nor their P.T. Sambandam, who died on 03.08.1996, during his life time, had made any claim to the suit property claiming partition. Similarly, till the life time of Shanmugha Sundaram who died on 30.04.2014, the plaintiffs did not make any claim at all on the suit property. Only after the demise of both, plaintiffs have thought it fit to file the present suit claiming partition. In fact, Shanmuga Sundaram was doing business in executing Engineering contracts, as a sole proprietor of M/s.K.Paramasiva Mudaliar & Sons. He had run the business in the name of his father out of the great love and affection he had for him. His father late Paramasivam was working as an Accountant in Southern Railways and not have any assets or substantial income, as he had to support his family too. One Mr.Kamalakaran, a close friend of K.Paramasivam, was employed as a Senior Officer in M/s.Burmashell & Co., now known as M/s.BPCL and finding that P.Shanmuga Sundaram was hard working introduced him to Burmashell &



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Co., P.Shanmuga Sundaram after resigning his job in B & C Mills started to execute sub contract works for the said organisation and he had grown to become a full fledged contractor in his own right. On the contrary, the father of the plaintiffs though was a graduate, was only working as Assistant in AGS office in Chennai and had got married at 24 years itself. Thereafter, he had immediately left his father and started living separately at Perumal Mudali Street, Triplicane.

(ii) They had sent a reply dated 25.04.2015 to the Legal Notice dated 20.04.2015 issued by the 1st plaintiff alone which would clearly elicit the true state of affairs on the subject matter. The suit property was purchased by P.Shanmugha Sundaram in his own name out of his own self exertions by a Sale Deed dated 26.01.1958 from R.Ramasamy and others. Late Paramasivam has not provided any funds for the purchase of the suit property by Shanmuga Sundaram. Subsequent to such purchase, Shanmuga Sundaram had been enjoying the suit property as its absolute owner thereof. A patta was also issued by the Revenue Authorities in the his favour. Even during his life time, Shanmuga Sundaram had mortgaged the suit property by executing a simple mortgage dated 14.05.2001 with the Nugambakkam Saswatha Dhana Rakshaka Nidhi Limited and had



discharged the said mortgage during his lifetime. As the absolute owner of the suit property, the same was assessed for payment of Property Tax and Water Tax raised by CMWS&S Board in the name of Shanmuga Sundaram too. Hence, no person including the plaintiffs or their father have any right to demand or claim any share in the suit property. While being so, after the demise of all the three elders, namely, K.Paramasivam, P.T.Sambandam, and P.Shanmuga Sundaram, the plaintiffs had with an evil eye and an intention to disturb the peaceful life and the joint family of these defendants, had chosen to issue a false notice.

(iii)The father of the plaintiffs and the plaintiffs would not have slept over all these years, if really they had a share as alleged by them. Admittedly, K.Paramasiam was residing in the suit house till his lifetime only with the father of the defendants 2 and 3 and not with the father of the plaintiffs, as the father of the plaintiffs, according to their grandfather was hen pecked and living separately since his marriage, he was neglecting his father when he was alive. The alleged statement that the father of the plaintiffs had told the plaintiffs before his demise, that the plaintiffs must not raise any issue for the partition of his half share over the property till the lifetime of the father of the defendants 2 and 3, is bereft of truth and



has been trotted out with a malafide intention and unbelievable.

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(iv) the suit has been filed by the plaintiffs in an unfair and unreasonable manner with an evil intention to gobble a half share in the suit property. As the absolute owner of the property the father of the defendants 2 and 3 was in possession of all the documents of title of the suit property and the same is presently in the custody of my mother, being the eldest member of the family. With reference to the averments in the Plaint, the plaintiffs are put to strict proof that K.Paramasivam had invested his own personal funds for the purchase of the suit property. During the purchase of the suit property, it was not the then practice if the purchaser to sign the Sale Deed. The said Shanmuga Sundaram had intended to give cash for the registration of the said property, to the purchaser, in the presence of the Registrar. As Paramasivam had accompanied the father of the defendants 2 and 3, during registration of the said Sale Deed, the sale consideration was handed over to K.Paramasivam to be given on behalf of the father of the defendants 2 and 3, in the presence of the Sub Registrar who had accordingly endorsed in the Sale Deed during such registration of the document. This has been informed by the said Paramasivam and the father of the defendants 2 and 3, to the



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defendants 2 and 3, including the father of the plaintiffs, as the defendants 2 and 3 were not even born at the time of such purchase and the 1st defendant was not married to the father of the defendants 2 and 3. The very fact that the father of the plaintiffs during his lifetime did not make any alleged claim on the property because he was fully aware of the fact that it was Shanmuga Sundaram alone, who had purchased the suit property out of his own self exertions. There was no requirement or need for the sale registration being done in a cunning manner by deceiving his own father and purchasing the suit property in the name of Shanmuga Sundaram.

(v)Admittedly, the said Paramasivam was educated and fully aware of the terms of the Sale and has also signed the document to confirm the fact that the purchase of the said property was his son only and not himself. These defendants further state that the daughter of K.Paramasivam, namely, Rajammal, was also aware of the aforesaid facts, which is the reason why during his lifetime, no claim was made by her. It is also pertinent to state that assuming but not admitting that she was entitled to a share, neither she nor her legal heirs have initiated any action for the same till date. The plaintiffs are also aware of the fact that the said Rajammal or



her legal heirs are not entitle to any share, as they have not made them parties to the present proceedings. The defendants deny that the said Paramasivam had at any point of time, believed much less told that he was the sole and absolute owner of the suit property as he had invested for the entire sale consideration. Either during his lifetime or that of ShanmugaSundaram or father of the plaintiffs, there was no whisper about the same. It was a known fact that the father of the plaintiffs was the owner of the property bearing Old No.72, New No.83, Kamdar Nagar, III Street, Nungambakkam, Chennai. Similarly, it was also a known and admitted fact that Shanmuga Sundaram was the absolute owner of the suit property. It was totally imaginary on the part of the plaintiffs to even aver that the said Paramasivam had wanted his sons not only to jointly own and possess the suit property equally but to live jointly in the first and ground floors of the suit property. It is a known and admitted fact that even during his life time, his two sons were never living together but owning two different properties, away from each other, and living independently with their respective families. Assumptions and presumptions as narrated has no legal validity and is nothing but a imaginary story trotted out for making a frivolous and vexatious claim on the suit property. The



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defendants deny that any discussion was made with respect to partition of the suit property either during the life of K.Paramasivam, P.T.Sambandam or P.Shanmuga Sundaram, or subsequent to their respective deaths, that too because of the alleged mutual love and affection of the brothers and their father. It is a known fact that the father of the plaintiffs after his marriage to the mother of the plaintiffs, had left his father late K.Paramasivam and was living separately, since then, and was neglecting father and his welfare until his death. In fact, there has been no denial by the plaintiffs to the averments made in the reply dated 25.04.2015 to the Legal Notice on the issue and several other issues. The plaintiffs did not discuss on partition because they had no right, title or interest with respect to the suit property. It is a known fact that the building on the suit property was old and even during the lifetime of Shanmuga Sundaram, he had wanted to demolish and reconstruct the same. But however, due to old age, he did not want to relocate and all the defendant including shanmuga Sundaram continued to live in the same house. The fact that these defendants had intended to sell/develop need not surprise or shock the plaintiffs at any point of time. It is total imagination on the part of the plaintiffs to assume that they had this imaginary conversations relating to



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the suit property with these defendants. No one enquired about the same and all of a sudden, these defendants became aware that the plaintiffs were casting an evil eye on the suit property after they had read the public notice inserted in the newspaper, about the suit property. It is a total imagination on the part of the plaintiffs to state that they had requested for copies of the title deeds, until the frivolous legal notice was issued by them. In the said reply dated 25.4.2015 it had also offered for having the same inspected at the office of the Counsel of these defendants. the allegations made with respect to these defendants calling upon the plaintiffs to withdraw the public notice and legal notice is not but sham and a façade, not in confirmation to the actual facts. In fact, on 6.5.2015, the counsel for the plaintiffs. Mr. S.Mohandass, had inspected the originals in the chamber of the counsel for these defendants, which fact has been totally suppressed in the suit avements, both by the same counsel, who drafted the plaint and filed the same. P.Shanmuga Sundaram, though was only 28 years when he had purchased the suit property was already executing civil contract works and earning for himself. He had finished his schooling in 17 years of age and since then working for his living and not dependant on his father or others. He was not only a self made man but as he was unmarried then he



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also was able to save substantial moneys to buy a property, namely, the suit property. P.Shanmuga Sundaram has not stealthily misused any funds of K.Paramasivam, to have the suit property registered in his name without his knowledge. The assumption of the fact that any act towards registration without his knowledge is totally unconceivable, as K.Parumasivam had also endorsed in the sale deed and was also aware of the contents thereof. There is no dispute with reference to the fact that it was P.Shanmuga Sundaram who had paid the entire sale consideration, as would be seen from the recitals of the said document. There has been no whisper by any of the deceased family members of the plaintiffs of the defendants either during their respective life times orally or in writing with reference to the fictitious story trotted out by the plaintiffs regarding the manner in which suit property was to be allegedly partitioned and enjoyed, which is nothing but an over imagination and the hallucination of the plaintiffs. As it is admitted by the plaintiffs that K.Paramasivam did not purchase any property, as he had no adequate funds of his own and he could not have purchased the suit property in the name of his younger son, as the question of the purchasing any property, would not arise as he had no funds of his own. The father of the plaintiffs died in 1996 and hence until 2015, the



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plaintiffs if at all, would have taken a legal action against P.Shanmuga Sundaram, when he was alive with respect to the suit property, if they had even an iota of doubt that he had intention to cheat anyone. It is an admitted fact that K.Paramasivam died in 1963 and the father of the plaintiffs died in 1996. Any right to them on account of adverse possession would accrue within a period of 12 years from their respective date of demise, which had expired long back. Hence the suit is time barred. The plaintiffs have no cause of action at all for seeking the relief of partition and separate possession of their alleged share in the suit property. The present suit is an abuse of process of court and has been filed only with an intention to extract money from us, with an evil eye in the said property. The plaintiffs do not have any case at all, much less a prima facie case for the grant of any relief, much less the reliefs as claimed in the suit.

4.In the Written Statement filed by the defendants 4 to 6, it is averred as follows:

(i) The plaintiffs do not have a prima facie case for any claim much less the reliefs claimed in the plaint. The plaintiffs have intentionally



and wilfully suppressed material facts that are pertinent to the present suit at hand. Late Mr.P.T.Sambandam and Late Mr.Shanmuga Sundaram are the elder and younger sons of Late. Mr. Paramasivam respectively. The plaintiffs herein are the son and daughter of the elder son, Late Mr.P. T Sambandham. Whereas, 1st defendant is the wife and defendants 2 & 3 are the sons of the younger son Late Mr.Shanmuga Sundaram respectively. The younger son, Mr. Shanmuga Sundaram was working as a full-fledged contractor who was running a proprietorship concern, M/s. K.Paramasiva Mudliar & Son. He was involved in the business of executing engineering contracts. Later on he went on to work for the prestigious company M/s.Burmashell & Co, now known as M/s. BPCL. This job was secured through very good friend of his father, Mr.Kamalakaran. His father, Late Mr.Paramasivam was in fact employed as an accountant in the Southern Railways and did not have any assets or properties earned during his lifetime. On the other hand, the elder son, Late Mr.P.T Sambandham got married at the age of 24 and lived separately with his own family. It was the younger son, Mr.Shanmuga Sundaram who lived along with his father and looked after all his needs till his death. The property in question situated at Door No. 26. (Old Door No.16) Coats Road, T.Nagar, Chennai-



600017 (hereinafter referred to as the suit schedule property) was purchased by Mr. Shanmuga Sundaram from one Mr. Ramasamy & others by a sale deed dated 26.01.1958 from his self-acquired funds and he did not seek any financial help from any other member of his family. It is quite obvious to state that Mr. Paramasivam had no part to play in the purchase of the said suit property. Moreover, since the time he purchased the suit property, he had been in peaceful possession of the same and his brother Mr. P.T. Sambandham had never resided there. Also, a patta was issued in the name of Mr. Shanmuga Sundaram for the suit property and all the revenue receipts and bills are addressed in his name. Mr. Shanmuga Sundaram had also mortgaged the suit property once by executing a simple mortgage deed dated 14.05.2001 with the Nungambakkam Saswatha Dhana Rakshaka Nidhi Limited and also discharged the same during his lifetime. Since he was the absolute owner in possession of the suit property, all property tax and water tax raised by CMWSSB was in the name of Mr. Shanmuga Sundaram. No other person had ever raised any claim of any kind whatsoever in the proceeds of the suit property. The plaintiffs herein are raising false and improper allegations stating that the suit property was bought by the father, Mr. Paramasivam and was illegally



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registered in the name of Mr. Shanmuga Sundaram. It is also wrong to state that their father wished to divide the said suit property equally and unbiased between his two sons. The plaintiffs herein were silent for all these years and all of a sudden after the demise of all the three persons, are claiming their share out of the property, which never belonged to them. The intentions of the plaintiffs are to disturb the peaceful enjoyment of the suit property by these defendants. Moreover, they do not have any proof or evidence that has been brought on record to show their legitimate claims. Hence, the suit is liable to be dismissed.

5. Based on the above said pleadings, the following issues were framed.

"(1) Whether the plaintiffs have any right, title or interest in the suit property?

(2) Whether the suit property is the personal property of Mr. Shanmugasundaram, under who the defendants are claiming their right?

(3) Whether the plaintiffs are entitled to claim partition?



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

6. In order to substantiate the case of the plaintiff, P.W.1 was examined and 7 documents were marked as Ex.P1 to Ex.P7 on the side of the plaintiffs. On the side of the defendants, D.W.1 was examined and 8 documents were marked as Ex.D1 to D8.

7. Heard both sides and perused the materials available on record.

8. The learned counsel for the plaintiffs would submit that the Plaintiffs' late grand father K.Paramasivam only purchased the suit property in the year 1958 from and out of his self-acquired funds and the entire sale consideration has been paid in the presence of the Sub-Registrar which has been endorsed on the backside of the first page of the said sale deed. However, the suit property has been registered in the name of his second son, late P. Shanmugha Sundaram, cheating his father as the suit property is purchased in his father's name.



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9.It has been further submitted by the learned counsel for the plaintiffs that since P.Shanmuga sundaram was then about 28 years old, qualified to the school level only, dependant on his father had been only assisting his father and was not married, it is not at all possible for him to have purchased from his own funds, since he had no funds of his own. The entire sale consideration was paid by the grandfather, Late K.Paramasivam as manifested in the Sale Deed dated 26.01.1958. If only the Plaintiffs grandfather had been aware that the suit property was registered in his younger son, P.Shanmuga Sundaram's name, he would not have told his elder son, the Plaintiffs father P.T. Sambandam, as to how it has to be shared between the brothers or told all his close and distant relatives that he had purchased the suit property from his hard earned self acquired funds. Further more no father would discriminate and purchase property for one of his son, and the Plaintiffs grandfather is definitely was never in that frame of mind.

10.The learned counsel for the plaintiffs would further submit that the Plaintiffs' grandfather had no property of his own till then and how he would venture to purchase in the name of one of his sons, that too in the



name of his younger son ignoring the elder son. It is definitely unbelievable and impossible. It is asserted by the plaintiffs' grandfather that the Father of the Plaintiffs should take the ground floor of the suit property in partition and his younger brother P.Shanmuga Sundaram, to take the first floor and have the land area equally divided between them, each to take one- half undivided share.

11.It has been further submitted by the learned counsel for the plaintiffs that the suit schedule property is in the name of Plaintiffs paternal uncle, P.Shanmuga Sundaram, is suppressed by the defendants after the death of their father and paternal uncle. The entire family circle including all the relatives and family friends could not believe that the suit property stands in the name of Late P.Shanmuga sundaram since they had all believed that the suit property stands in the name of Late K.Paramasivam, and they immediately started saying that it has been falsely manipulated and created by cheating.

12. The learned counsel for the plaintiffs would further submit that the suit property cannot become the individual property of the father of the



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Defendants 1 to 3 as alleged by the Defendants since the suit property had been purchased from and out of the funds (the corpus) of the Plaintiffs grandfather, K.Paramasivam. The 1st Defendant herein could not establish the funds for purchase in the name of her husband, late Shanmuga sundaram as there was no chance for the late P. Shanmuga sundaram to pay the sale consideration at the time of execution of sale deed since he did not have any funds of his own. The sale deed itself is a sham and nominal document not enforceable in law and deserves to be declared null and void.

13.It has been further submitted by the learned counsel for the plaintiffs that the entire family members of the Plaintiffs and the Defendants have been in enjoyment of the suit property as co-owners, the Plaintiffs herein are entitled to have partition of the said property according to their respective shares available under the law in force. The Plaintiffs and the Defendants are the absolute owner of the suit property and he had the absolute right over the property as he purchased from his self- acquired funds since he only paid the entire sale consideration and the said payment is also endorsed in the sale deed itself, but mischievously the name of P. Shanmuga Sundaram was inserted as the purchaser of the said



property, the fact of which was brought to the knowledge of the Plaintiffs herein only in the year 2015. Hence the suit was filed within time for seeking appropriate relief under the law in force. Since the relationship of the plaintiffs and the defendants are an admitted fact, the right of co-ownership in respect of the suit property, the plaintiffs herein are entitled to claim the right over the property. Thus, he seeks the reliefs according to prayers of the suit.

14.The learned counsel for the Defendants 1 to 3 would submit that the above suit has been filed by the plaintiffs claiming partition of the suit property, which is not owned by them at all against the defendants. The suit property was purchased by late P.Shanmuga Sundaram by the sale deed dated 26.01.1958 marked as Ex.P1 and Ex.D1, out of his own self acquired funds and as such as absolute owner of the suit property had dealt with the same by mortgaging the same by registered Mortgage Deed dated 14.05.2002 marked as Ex.D6 and redeemed the same by receipt dated 14.01.2008 marked as Ex.D7. A patta dated 14.03.2001, marked as Ex.D5 has been issued in the name of late P.Shanmuga Sundaram. Similarly the



property tax has also been assessed for the suit property by the Corporation of Chennai as would be seen from Ex.D4 dated 01.03.1999. Hence P.Shanmuga Sundaram was the absolute owner of the suit property and after his demise on 30.4.2014, the defendants, as his Class I legal heirs have inherited the suit property absolutely. The plaintiffs do not have any share in the suit property at all.

15.It has been further submitted by the learned counsel for the defendants 1 to 3 that the consideration for purchasing the suit property was not provided by the paternal grandfather of the plaintiffs since he was working as an Accountant in Southern Railways and not have any assets or substantial income, as he had to support his family too during his life time. Further, he did not have any assets or properties earned during his lifetime. Whereas, the husband and father of the defendants 1 to 3, Mr. Shanmuga Sundaram was working as a full-fledged contractor who was running a proprietorship concern, M/s. K.Paramasiva Mudliar & Son. He was involved in the business of executing engineering contracts. Hence, he was able to earn amounts to pay for the sale consideration of the suit property.



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16.The learned counsel for the defendants 1 to 3 would further submit that the father of the plaintiffs, the elder son, Late Mr.P.T Sambandham got married at the age of 24 and lived separately with his own family. However, it was the younger son, Mr.Shanmuga Sundaram who lived along with his father and looked after all his needs till his death. No document or evidence has been filed or produced stating that the family was having a common nucleus and that out of the family income, the suit property was purchased. While PW1 was born on 29/2/1952, at the age of 6 years, how he could know the alleged contributions of the sale consideration for the purchase of the suit property in the year 1958. No proof of any contribution or payments made by late K. Paramasivam, who was a civil contractor, as alleged, has been adduced or filed by the plaintiffs.

17.The learned counsel for the defendants 1 to 3 would further submit that only after the demise of their father P.T.Sambandam and their paternal uncle P.Shanmuga Sundaram, for the first time, the claim for partition was made on 20/4/2015 by their legal notice marked as Ex.P4 for which a suitable reply dated 25/4/2015 marked as Ex.P6 was sent by defendants. While K.Paramasivam was an educated person and working



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as an accountant in Southern Railway, it is not possible to sign in the sale deed dated 26.01.1958 executed in favour of his younger son and hence, it cannot be said that P.Shanmuga Sundaram had stealthily and cunningly included his name as a purchaser in the sale deed. As shown Ex.P1/D1, Sale Deed, the vendors have conveyed the property in favour of P.Shanmuga Sundaram who is the absolute owner of the Property. The suit is liable to be dismissed with exemplary costs for having filed a frivolous and vexatious suit against the defendants, without a prima-facie case.

18. The learned counsel for the defendants 4 to 6 would submit that neither the plaintiffs nor the the father of the plaintiffs had any right or interest in the suit property since the suit property was purchased by late P.Shanmuga Sundaram by the sale deed dated 26.01.1958 marked as Ex.P1 and Ex.D1, out of his own self acquired funds and as such as absolute owner of the suit property had dealt with the same by mortgaging the same by registered Mortgage Deed dated 14.05.2002 marked as Ex.D6 and redeemed the same by receipt dated 14.01.2008 marked as Ex.D7. A patta dated 14.032001, marked as Ex.D5 has been issued in the name of late P.Shanmuga Sundaram. Similarly the property tax has also been assessed



for the suit property by the Corporation of Chennai as would be seen from Ex.D4 dated 01/3/1999.

19. It has been further submitted by the learned counsel for the defendants 4 to 6 that the plaintiffs have never made any claim over the suit property until death of their father and paternal uncle. However, the plaintiffs are conveniently choosing to reason this delay by stating that there father had advised them not to make any claims during the lifetime of their uncle. If they had true and real shares in the suit property, they would have clearly opted to make these claims when their uncle was alive, but with the ill-intention, they are now asking for share in the suit property which stands in the name of Late.Mr.Shanmuga sundaram. Hence, the suit is liable to be dismissed since no prima facie case is not proved.

20. Heard both sides and perused the materials available on records.

Issue Nos.1,2 3, and 4:



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21. It is admitted fact that the relationship is not in dispute between the parties. The main contention of the plaintiffs is that while the suit property was purchased by their grand father ie. Late. K. Paramasivam out of his own fund, their paternal father ie,P.Shanmugasundaram, cheated their grandfather by executing the sale deed-Ex.P1/D1 in his favour. In this regard, they are relying upon the endorsement made by their Grand father in the Sale Deed dated 26.01.1958.

22. On a perusal of Ex.P1/D1 Sale Deed dated 20.01.1958, it is executed in favour of the paternal uncle of the plaintiffs wherein an endorsement was made by their grand father for making the consideration of sale. In this regard, no independent witness was examined to prove their contention to have made the entire sale consideration for purchasing the suit property by their grandfather. Further, it is only an endorsement to effect the payment for purchasing the suit property and it cannot be considered that the grandfather of the plaintiffs has paid the sale consideration to purchase the suit property from and out of his self acquired funds. Further, the plaintiffs have not let in any oral and documentary evidence to prove that the suit property was purchased out of



their grandfather's income. As an Accountant in the Southern Railway, the grandfather of the plaintiffs would know the contents of the Ex.P1/D1-Sale Deed dated 26.01.1958 which is executed in favour of his younger son. As per the contention of the plaintiffs, while there is no property in the name of their grandfather, it is not possible to execute the Ex.P1/D1-sale deed dated 26.01.1958 in favour of the 2nd son ie. P.Shanmugasundaram, from and out of his income. Further, if it was purchased by Late K.Paramasivam, the daughter of K.Paramasivam namely, Rajammal, has not been impleaded as party in the suit to prove their contention and the plaintiffs themselves states in the plaint that their grandfather had not intended to give her share in the said suit property.

23. Further, the plaintiffs have not proved their enjoyment and possession over the suit property by producing oral and documentary evidence. The plaintiffs has only made averments with presumptions and assumption without producing any oral and documentary evidence to corroborate the same.

24. However, on the side of the defendants, Ex.D1 would show



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that the suit property stands in the name of Late.Mr.P.Shanmugasundaram which was purchased by him in the year 1958 at the age of 28 years old

which is not schooling age as stated by the plaintiffs. Further, all revenue records are in the name of P.Shanmugasundaram vide Ex.D4, D5 and D8. Moreover, the suit property was mortgaged with Nungambakkam Saswatha Dhana Rakshaka Nidhi Ltd on 14.05.2001 by Late P.Shanmugasundaram and it was discharged from it on 14.01.2008. Vide Ex.D6 and D7 respectively. Mere presumptions and assumption cannot prove the case of the plaintiffs without producing proper oral and documentary evidence. In the absence of oral and documentary evidence on the side of the plaintiffs to prove that the suit property was purchased by their grandfather, the suit fails.

25. In view of the aforesaid discussions and observations, it is proved that the plaintiffs have no any right, title or interest in the suit property. Accordingly, Issue No.1 is answered against the plaintiffs. As no oral and documentary evidence has been placed by the plaintiffs to prove that the suit property was purchased by their grandfather out of his own



fund, it is confirmed that the suit property is the personal property of Mr. Shanmugasundaram, under who the defendants are claiming their right.

Accordingly, issue No.2 is answered in favour of the defendants and against the plaintiffs. In view of the production of documents Vide Ex.D1 to D8, on the side of the defendants to prove the title of the suit property, it is confirmed that the suit property is belonged to P. Shanmugasundaram, the plaintiffs are not entitled to claim partition over the suit property and any other reliefs. Accordingly, Issue No.3 and 4 are answered against the plaintiffs.

26. Accordingly, the suit is dismissed. No costs.

31.01.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Mps/Lbm



1. List of Exhibits marked on the side of the Plaintiffs:-

1. Ex.P1 is the certified copy of the sale deed executed by the plaintiff's uncle dated 26.01.1958.
2. Ex.P2 is the publication in the Hindu daily newspaper dated 06.04.2015.
3. Ex.P3 is the publication in the Daily Thanthi newspaper dated 06.04.2015. .
4. Ex.P4 is the office copy of the legal notice to the defendants dated 20.04.2015.
5. Ex.P5 Series (6 no's) is the acknowledgement of the receipt of the legal notice by the defendants.
6. Ex.P6 is the reply notice by the defendant counsel to the plaintiff's counsel dated 25.04.2015.
7. Ex.P7 is the rejoinder sent by the plaintiff counsel to the defendant counsel dated 04.05.2015.

2. List of Exhibits marked on the side of the Defendants:-

8. Ex.D1 is the photocopy of the sale deed dated 26.01.1958. (Marked through PWI cross.)
9. Ex.D2 is the original of Ex.P7. (Marked through PWI cross.)
10. Ex.D3 is the copy of the order passed in OP.No.15 of 1984 dated 15.10.1990, (Compared with original and xerox copy marked.) (Marked through DWI by the Advocate Commissioner.) .



- 11.Ex.D4 is the photocopy of the provisional notice issued by the Corporation of Chennai. (Marked through DW1 by the Advocate Commissioner.)
- 12.Ex.D5 is the photocopy of the Patta issued by the Tahsildar, Mambalam Taluk. (Compared with the original and verified.) (Marked through DW1 by the Advocate Commissioner.)
- 13.Ex.D6 is the photocopy of the Mortgage deed dated 14.05.2001 executed by P. Shanmugha Sundaram and Others in favor of Nungambakkam Saswatha Dhana Rakshaka Nidhi Ltd. (Compared with the original.) (Marked through DWI by the Advocate Commissioner.)
- 14.Ex.D7 is the photocopy of the receipt dated 14.01.2008 executed by Nungambakkam Saswatha Dhana Rakshaka Nidhi Ltd. for the discharge of the Mortgage. (Compared with the original.) (Marked through DWI by the Advocate Commissioner.)
- 15.Ex.D8 is the The photocopy of the Demand card issued by the CMWSSB. (Compared with the original.) (Marked through DWI by the Advocate Commissioner.)

3. List of Witnesses examined on the side of the Plaintiff and Defendants:-

PW.1 – Mr. T.S. Prem Kumaar

4. List of Witnesses examined on the side of the Defendants:-

D.W.1 – Mrs. S. Karpagam

31.01.2024



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C.S.No.819 of 2015

A.A. NAKKIRAN, J,
mps/lbm

Pre-Delivery Judgment in

C.S.No.819 of 2015

31.01.2024