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CS.No.175 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2023

PRONOUNCED ON : 22.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CS.No.175 of 2014

1. G.Ramesh
2. G.Sankar
3. T.Priya
4. C.Ganesan

...Plaintiffs

.....Vs.....

1. V.Kousalya (deceased)
2. V.Balu
3. R.Vijaya
4. V.Sivakumar
5. V.Sundar

6. The Manager, George Town Cooperative Bank
Chennai-1

...Defendants

Prayer:- This Civil Suit has been filed, under Order VII Rule 1 of CPC, for the reliefs as stated therein.

For Plaintiffs : Dr.C.Ravichandran
(For M/s.G. Jahanathan)
For Defendants : Mr.R.Bharanidharan-DD1 to 5



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JUDGMENT

This Civil Suit has been filed, seeking a judgement and decree, for the following reliefs:-

- (a) Preliminary decree for partition and dividing the A and B schedule properties into 6 equal shares by metes and bounds and allot one such share to the Plaintiffs.
- (b) Direction to the Defendants 1 to 5 to pay mesne profits to the Plaintiffs from the date of filing of the suit.
- (c) Permanent injunction, restraining the Defendants from interfering with the Plaintiffs' peaceful possession and enjoyment of the suit properties by alienating or encumbering.
- (d) Costs of the suit.

2.The case of the Plaintiffs, as set out, in the plaint is as follows:-

a) One P.Vedagiri, who is the grand father of the Plaintiffs and the father of the Defendants 2 to 5 and the husband of the 1st Defendant (2nd wife), has purchased the A-Schedule property, by a sale deed, dated 21.09.1961. P.Vedagiri had two wives, namely Jagadambal (1st wife) and Kousalya (2nd wife). Jagadambal is the grand mother of the Plaintiffs and the Kousalya is the mother of the Defendants 2 to 5. The mother of the



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Plaintiffs, namely, G.Kamalini, was born to P.Vedagiri through the 1st wife. Jagadambal predeceased her husband on 29.12.1958, leaving behind her husband and a daughter. Thereafter, P.Vedagiri had married the 1st Defendant to look after the child and P.Vedagiri died on 22.11.1985 and G.Kamalini died on 19.06.2013. The Defendants 2 to 5 were born to P.Vedagiri through the 1st Defendant. The Plaintiffs and the Defendants 1 to 5 are joint owners of the A-Schedule property. The Defendants 1 to 5 mortgaged the A-Schedule property with the 6th Defendant Bank by registered mortgage deeds on various dates, namely, 16.04.1992, 22.05.1998, 23.02.1999, 17.10.2002 and 22.01.2008, for Rs.1,00,000/-, Rs.3,00,000/-, Rs.3,00,000/-, Rs.5,00,000/- and Rs.5,00,000/-, respectively, without the knowledge of the Plaintiffs. Hence, the said mortgages are not binding on the Plaintiffs.

b)The A-Schedule property has ten portions and out of 10 portions, 6 portions situated in the ground floor and 4 portions in the second floor. The Defendants 1 to 5 let out 6 portions to the third parties for rent. The total income derived from the let out portions is Rs.80,000/- and the Plaintiffs are entitled to have a share of Rs.30,000/- in the same. The 2nd Plaintiff is in actual physical possession of 800 square feet of



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building in the first floor and used the same as a ware house for his software and hardware business under the name and style of "M/s.GIRI COMPUTER TECHNOLOGIES. The Defendants are preventing the 2nd Plaintiff from entering into the property to do his business. The Defendants 1 to 5 have interfered with the 2nd Plaintiff's possession in the first floor portion of the A-Schedule property by removing computer spare parts worth about Rs.5 lakhs. The Plaintiffs made several demands for partition of the A-Schedule property, but the Defendants 1 to 5 denied the same and are trying to alienate the same. As per the Hindu Succession Act 1956, the Plaintiffs are entitled to have 1/6th share and the Defendants 1 to 5 are entitled to 5/6th share in the A-Schedule property. The 6th Defendant is added as a party to the suit, since the A-Schedule property was mortgaged with them by the Defendants 1 to 5, who have no right to do so without the consent of the Plaintiffs.

c)In respect of the B-Schedule property, one K.J.Muthu filed OS.No.6684 of 1982 against Late Vedagiri and others, claiming title over the B-Schedule property and the said suit was dismissed and the appeal filed in AS.No.346 of 1986 against the same was also dismissed, thereby title to the B-Schedule property was conferred to late P.Vedagiri. The



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Plaintiffs came to know through encumbrance certificate that in respect of the B-Schedule property, the Defendants 1, 2, 4 and 5, who have no unilateral right over the B-Schedule property, have executed a release deed dated 21.02.2003, in favour of the 3rd Defendant illegally and hence, it is not binding on the Plaintiffs. On 18.12.2013, the Plaintiffs sent a legal notice to the Defendants 1 to 5, by demanding partition of the A-Schedule property and a reply was sent on 16.01.2014 by the Defendants 1 to 5, denying partition with false allegations. The Plaintiffs have denied those false allegations by way of re-joinder dated 30.01.2014. In such circumstances, this Civil Suit has been filed, seeking the reliefs, as stated above.

3.In the written statement filed by the 5th Defendant, it is averred as follows:-

a)The relationship between the Plaintiffs and the Defendants 1 to 5 is true. The mother of the Plaintiffs is none other than the step sister of the Defendants 1 to 5. Through the 1st wife, P.Vedagiri had one daughter named Kamalini, who is the mother of the Plaintiffs. After the demise of the first wife, P.Vedagiri had married the 1st Defendant and the



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Defendants 2 to 5 were born to them. However, the 1st Defendant had brought up late Kamalini as her own daughter. P.Vedagiri utilizing the jewels of the 1st Defendant had purchased the A-Schedule property. Kamalini was given in marriage to one Ganesan on 21.01.1972. P.Vedagiri had purchased the agricultural lands along with a house, measuring 33 cents in Edamichi Village, Chengleput in the name of Kamalini. P.Vedagiri had mortgaged the A-Schedule property for putting up a construction with the Thiagaraya Nagar Benefit Fund and the George Town Co-operative Bank. P. Vedagiri had passed away on 22.11.1985, after which the Defendants 1 to 5 were in exclusive possession and enjoyment of the said property, in which the Plaintiffs are now claiming shares. Late Kamalini never raised claim over the property at any point of time, but she was aware of the mutation of the revenue records in the name of the Defendants 1 to 5 and also about the various mortgages. They also raised loans from the George Town Co-operative Bank by mortgaging the same on various occasions and developed the said property, which was well within the knowledge of Late Kamalini and the Plaintiffs. They had taken care of the Plaintiffs by giving them proper education and also leased out a portion of the property in question for keeping computer spares and



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the 2nd Defendant was running an agency called Giri Computers. The Plaintiffs had never been in joint possession of the property at any point of time as coparceners.

b)When the Plaintiffs mother, Kamalini passed away on 19.06.2012, the Plaintiffs for the first time at the time of performing the 15th day rites for their mother, had raised the issue that their mother was entitled to a share in the property, which was also discussed before the elders of the family, who had convinced the Plaintiffs that late P. Vedagiri had properly provided sufficient properties to Kamalini by purchasing the property in Chengleput in her name and therefore, there was no reason to claim any share in the suit properties. At the intervention of the elders, the Plaintiffs kept quiet till the December 2013 and once again started to raise the issue by sending a legal notice dated 18.12.2013 making false claim over the properties, which have been in exclusive possession and enjoyment of the Defendants 1 to 5 since 22.12.1985.

c)In respect of the B-Schedule property, the same was originally Inam lands under the occupation of one PM.Namadevan Chettiar, but, however, since the said P.M.Namadevan Chettiar was not in enjoyment of the property, late P.Vedagiri was holding the land by allowing one



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Hanumanthan to occupy the land. However, the above mentioned PM.Namadevan Chettiar seemed to have executed a lease deed in respect of the said land in favour of one K.J. Muthu, who had filed OS.No.6684 of 1982 against P.Vedagiri and his tenant Hanumanthan. seeking permanent injunction. The said suit came to be dismissed by a judgement and decree dated 21.12.1984 and the appeal filed in AS.No.346 of 1986 also came to be dismissed by a judgement and decree dated 30.07.1990. Therefore, late P.Vedagiri was contesting the suits and holding the property not as a owner, but only by possession, which on the date of his death on 22.11.1985, came to an end and thereafter, the 2nd Defendant took possession of the property, not as a legal heir of Vedagiri, but in his own right and he also paid dues to the Government and put up construction in the said land and due to lack of legal knowledge, the Defendants 1 to 5 executed a release deed dated 21.03.2003 in favour of the 3rd Defendant in respect of the said property. Therefore, late Kamalini will have no right over the said property as late P.Vedagiri himself did not have any right or document in his name in respect of the 'B' Schedule property and the Plaintiffs will also have no right in the 'B' Schedule property.



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d)The Plaintiffs are not entitled to partition, as their claim is hit by 'ouster' as the Plaintiffs mother Kamalini had not claimed for partition of the properties from 22.11.1985, on the date when P.Vedagiri died and subsequently, when the Defendants 1 to 5 had mutated the revenue records in respect of the suit properties in their names and on subsequent dates in the year 1992 onwards, when the Defendants 1 to 5 had mortgaged the suit property for the purpose of developing the suit property and put up constructions, which has been repaid by the Defendants 1 to 5 and the Plaintiffs or their mother did not raise any objection when the Plaintiffs themselves attained majority. The suit is barred by limitation as the cause of action for seeking partition by Kamalini, daughter of P. Vedagiri started from 22.11.1985. The suit ought to be dismissed for non-joinder of parties, as the Plaintiffs who claim share in the property through their mother late Kamalini, on the score of being the first daughter of late P Vedagiri, and projected their right under Section 15 of the Hindu Succession Act, 1956, failed to implead their father as a party to the suit when their father is also a legal heir of late Kamalini. There is no document to show that the B-Schedule property belonged to



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late P.Vedagiri. The 2nd Plaintiff, taking advantage of the relationship had stolen the documents pertaining to the suit properties and filed the suit. The cause of action as raised by the Plaintiffs are not maintainable as the cause of action to file the suit for partition had arisen on the date of death of P.Vedagiri in the year 1985 by the mother of the Plaintiffs. Hence, the suit is liable to be dismissed.

4. The Defendants 1 to 4 have filed separate written statements, adopting the written statement filed by the 5th Defendant.

5. On the pleadings of the parties, the following issues were framed:-

- (1) Whether the Plaintiffs are entitled to partition of the suit properties?
- (2) Whether the Plaintiffs are entitled to mesne profits from the Defendants since the date of filing of the suit?
- (3) Whether the claim of the Defendants that they were in enjoyment of the suit schedule properties is true?
- (4) Whether the Defendants have ousted the Plaintiffs from enjoyment of the property for over a statutory period?



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(5)Whether the suit is bad for non-joinder of necessary parties to the suit?

(6)To what relief the parties are entitled?

6.On the side of the Plaintiffs, Ex.P1 to Ex.P31 were marked and PW.1 was examined. On the side of the Defendants, DW.1 was examined.

7.The learned counsel for the plaintiffs would submit that one Mr.P. Vedhagiri is the grandfather of the plaintiffs who are born to one Kamalini being only daughter of P.Vedhagiri and 1st wife namely Jagadambal and father of the defendants 2 to 5 and the husband of first defendant namely Kousalya who is the 2nd wife. The A & B Suit schedule properties are belonged to grandfather of the plaintiffs as mentioned in the plaint. After the death of P.Vedhagiri and Mrs.Kamalini, the plaintiffs and defendants constituted the Joint Hindi Undivided Family. In the A schedule property, the 2nd plaintiff has occupied one of the portion running the office in the name of M/s.Giri Computer Technologies while other portions are let out to 3rd parties. The B Schedule property without the consent of the plaintiffs, is being executed a release deed in favour of the



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3rd defendant by the other defendants. While Mr.P.Vedhagiri being grand father of the plaintiffs, the said suit properties are denied for partition to be entitled to the plaintiffs. Hence, the plaintiffs seek 6 equal shares by metes and bounds and allot one such share to the plaintiffs in the suit schedule properties and also direct the defendants 1 to 5 to pay mesne profits to the plaintiffs from the date of filing of suit and for consequential permanent injunction restraining them from alienating or encumbering the suit properties.

8. In support of his arguments, the learned counsel for the plaintiffs has relied upon the following Judgments for considerations:

- (i) in the case of “Rajeswari Ammal v. Arunachalam” and others [(2009) 8 MLJ 337],
- (ii) “Neelavathi and others v. N.Natarajan and others” [(1980) 2 SCC 247],
- (iii) “Mohd. Zainulabudeen(since deceased) by Lrs. V. Sayed Ahmed Mohideen and others” [(1990) 1 SCC 345],
- (iv) “Vidya Devi Alias Vidya vati (Dead) By Lrs. V. Prem Prakash and others” [(1995) 4 SCC 496],



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- (v) “Darshan Singh v. Gujjar Singh” [(2002) 2 scc 62],
- (vi) “T.A.Mohamed Moideen (died) and Others v. T.A.Haja Hussain and others [(2013) 8 MLJ 116],
- (vii) N.Padmamma and others v. S.Ramakrishna Reddy and others [(2015) 1 SCC 417], and
- (viii) Rajeswari Ammal v. Arunachalam and others [(2009) 8 MLJ 337].

9. The learned counsel for the defendants would submit that the relationship between the parties is admitted. A schedule property has been purchased after selling the jewellery belonging to 1st defendant who is mother of the 2 to 5 defendants. The defendants have mortgaged the A Schedule property with the Bank for the purpose of construction in the A schedule property. The mortgage loan was repaid by the Defendants. After death of their father, the Plaintiffs had never been in joint possession of the property at any point of time as coparceners.

10. It has been further submitted that in respect of the B-Schedule property being Inam property, the 2nd Defendant took possession of the



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property after appeal came to end which has been filed against father of the defendants 2 to 5. After some while, the B schedule property is executed in favour of the 3rd Defendant in respect of the said property. Therefore, late Kamalini will have no right over the said property as late P.Vedagiri himself did not have any right or document in his name in respect of the 'B' Schedule property and the Plaintiffs will also have no right in the 'B' Schedule property. After death of mother of the plaintiffs, they had raised the issue that their mother was entitled to a share in the property. They are convinced by our relatives stating that Late P. Vedagiri had properly provided sufficient properties to Kamalini by purchasing the property in Chengleput in her name.

11.The learned counsel for the defendants would further submit that the Plaintiffs are not entitled to partition, as their claim is hit by 'ouster' as the Plaintiffs mother Kamalini had not claimed for partition of the properties after death of P.Vedagiri. Subsequently, the Defendants 1 to 5 had mutated the revenue records in respect of the suit properties in their names. The suit ought to be dismissed for non-joinder of parties, as the Plaintiffs who claim share in the property through their mother late



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Kamalini, on the score of being the first daughter of late P Vedagiri, and projected their right under Section 15 of the Hindu Succession Act, 1956, failed to implead their father as a party to the suit when their father is also a legal heir of late Kamalini. Hence, the suit is liable to be dismissed.

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

Issue Nos.1,2 3, 4, 5 and 6.

13.It is admitted fact that the relationship between the parties is not disputed. The mother of the plaintiffs 1 to 3 born to P.Vedhagiri and his 1st Wife namely Jagadambal. The 1st defendant is the 2nd wife of P.Vedhagiri and the defendants are born to them. It has been stated on the side of the defendants in respect of A Schedule property that the property has been purchased by selling the jewellery of mother of the defendants and mortgage loan for putting up construction over the suit property has been repaid by them. Further, another contention has been raised that the plaintiffs are ouster and the defendants are occupying the suit schedule



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properties. However, they have not placed any oral and documentary evidence to prove that the Jewels belonging to the mother of the defendants was sold and sale consideration was paid by her. Further, even though various mortgage deeds have been produced, the defendants have not proved that mortgage loan was repaid by the defendants by way of producing documentary evidence. In the absence of oral and documentary evidence, these cannot be considered. Further, even though it has been stated that the petitioners are ouster, it is admitted by the learned counsel for the defendants that the 2nd plaintiff is running a agency called Giri Computers providing with refurbish computer peripherals to various institutions as tenant. But, they have not produced any Rental agreement to that effect entered between them. Further, it is also admitted that mother of the plaintiffs 1 to 3 died in the suit schedule property staying with the defendants. Hence, the principle of ouster cannot be applicable to the plaintiffs since the defendants failed to prove the same in the manner known to law. Further, in respect of the B Schedule property, after the right of P.Vedhagiri was affirmed in the Judgment and decree dated 21.12.1984 passed in O.S.No.6684 of 1982 under Ex.P25 and also the Judgment and Decree dated 30.07.1990 passed in A.S.No.346 of 1986



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under Ex.P26, the said property was executed in favour of the 3rd defendant by way of release deed. Hence, it is proved that P.Vedhagiri is the absolute owner of the B Schedule property.

14. In view of the aforesaid discussions and observations, it is proved that the plaintiffs are also coparcener of the suit schedule property. Hence, the plaintiffs are entitled to Partition of the suit properties. Accordingly, Issue No.1 is answered in favour of the plaintiffs. As no documentary evidence has been placed by the plaintiffs about the income derived from the suit properties, the plaintiffs are not entitled to mesne profits from the defendants since the date of filing of the suit. Accordingly, Issue No.2 is answered against the plaintiffs and in favour of the defendants. Since the 2nd plaintiff is running a Computer agency in the A schedule property and daughter of P.Vedhagiri died in the said suit schedule property, the claim of the defendants that they were in enjoyment of the suit schedule property is not true and the defendants have not ousted the plaintiffs. Accordingly, Issue Nos.3 and 4 is answered in favour of the plaintiff and against the defendants. All the necessary parties have been impleaded in the suit, the suit is not bad for non-joinder for necessary



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parties to the suit. Accordingly, the Issue No.5 is answered.

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15. In view of the above observations, since the 1st defendant died, the plaintiffs are entitled to share of 1/5th in whole in the Suit schedule properties and the defendants 2 to 5 are entitled to 1/5th share each in the suit schedule properties. Accordingly, the Issue No.6 is answered in favour of the plaintiffs.

16. Accordingly, the suit is partly decreed as aforesaid.

22.01.2024

Index: Yes/No

Web: Yes/No

Speaking/Non Speaking

Srcm/Lbm



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

WEB COPY 1. Ex.P1 is the Birth Certificate of Kamalini dated 05.11.1956.

2. Ex.P2 is the Death Certificate of Jagadambal dated 29.12.1958.

3. Ex.P3 is the Mortgage Deed Document No.650 of 1962 dated 23.04.1962.

4. Ex.P4 is the Sale Deed No.1715 of 1961 dated 21.09.1961.

5. Ex.P5 is the Death Certificate of Vedhagiri dated 22.11.1985

6. Ex.P6 is the Mortgage Deed Doc. No.888 of 1992 dated 16.04.1992.

7. Ex.P7 is the Mortgage Deed Doc. No.1309 of 1998 dated 22.06.1998.

8. Ex.P8 is the Mortgage Deed Doc. No.438 of 1999 dated 23.02.1999.

9. Ex.P9 is the Mortgage Deed Doc. No.2900 of 2002 dated 17.10.2002.

10.Ex.P10 is the Driving Licence of 2nd plaintiff dated 30.07.2004.

11.Ex.P11 is the Tamilnadu VAT Registration Certificate in the name of the 2nd plaintiff dated 08.03.2007 and 20.07.2006.

12.Ex.P12 is the the Mortgage Deed Doc. No.146 of 2008 dated 22.01.2008.

13.Ex.P13 is the Property tax receipt stands in the name of the defendants dated 19.11.2008.



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14.Ex.P14 is the Intimation from I.T. Department to 2nd Plaintiff dated 22.12.2011.

15.Ex.P15 is the Death Certificate of Kamalini dated 12.07.2013.

16.Ex.P16 is the Legal heirship Certificate of Kamalini.

17.Ex.P17 is the Service details cum accounts summary issued by E.B. Department standing in the name of defendants dated 15.10.2013.

18.Ex.P18 is the relationship certificate issued by Tahsildar, dated 28.10.2013.

19.Ex.P19 is the Encumbrance Certificate issued by SRO Mylapore dated 13.12.2013.

20.Ex.P20 is the Legal Notice issued by the Counsel for the plaintiff dated 18.12.2013.

21.Ex.P21 is the Family Card

22.Ex.P22 is the Reply Notice dated 16.01.2014.

23. Ex.P23 is the Rejoinder dated 30.01.2014

24. Ex.P24 is the Genealogical Chart

25.Ex.P25 is the Judgment decree passed in O.S.No.6684 of 1982 dated 21.12.1984

26.Ex.P26 is the Judgment in A.S.No.346 of 1986 dated 30.07.1990

27.Ex.P27 is the Encumbrance Certificate dated 15.04.2014



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28.Ex.P28 is the Release Deed No.1157 of 2003 dated 16.04.2014

29.Ex.P29 is the Legal Notice dated 19.04.2014.

30.Ex.P30 is the Reply Notice dated 12.05.2014

31.Ex.P31 is the Re-Joinder dated 26.05.2014

2. No exhibits are marked on the side defendants.

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

PW.1 – G.Sankar

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

D.W.1 – V.Sivakumar

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Srcm/lbm

Pre-Delivery Judgement in
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