



C.S.No.110 of 2010

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.03.2025

CORAM

THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

C.S.No.110 of 2010

Mrs. Lalitha

.... Plaintiff

Vs

1. Ellammal (deceased)
W/o. Late Kanniah Naidu
2. Logaiah Naidu
3. Rani (Deceased)
4. Indirani
5. Govindan
6. Rajeswari
7. P.Kala @ Devika
8. Jegannathan
9. J. Thamariselvan
10. Mrs.N. Jayanthi (Deceased)
11. Nanda Kumar,
12. Vinitha,
13. M. Sweta

.. Defendants



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Prayer: Complaint filed under Order VII, Rule 1 of CPC r/w. Order IV, Rule 1 of

Madras High Court Original Side Rules praying to pass a decree and judgment against the defendants:

(a) to declare that the partition deed executed between the 1st defendant and her sister is illegal and non est in law and consequently the sale deed dated 27.12.2006 executed in favour of Sekhar by the 1st defendant pursuant to the partnership deed is not binding on the plaintiff and other defendants.

(b) to declare that the settlement deed dated 26.09.1984 executed by the late father of the plaintiff in favour of defendants 2 to 7 as illegal, non est and not binding on the plaintiff:

(c) to partition the schedule mentioned properties by metes and bounds and grant 1/8th share to the plaintiff.

(d) to pay the costs of the suit and

(e) for such further or other reliefs;

For Plaintiff : M/s. Vedavalli Kumar

For Defendants : Mr. S.L.Sudarsanam

for D5, D6, D8 and D9

D1, D3 and D10 – deceased

D2, D4, D7, D11 to D13-set exparte



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JUDGMENT

The Plaintiff filed the above suit against the defendants seeking the above said reliefs.

2. The case of the plaintiff, as set out in the plaint is as follows;

(a) The plaintiff is the daughter of 1st defendant and late Kannaiya Naidu and the defendants 2 to 7 are her brothers and sisters. The 1st defendant and Late Kannaiya Naidu had five daughters and three sons and one of her brother by name Bagthavatchalam died as a bachelor. The 1st defendant and one Durgi Ammal were the daughters of Nallayi Ammal, who is plaintiff's maternal grand mother. Nallayi Ammal possessed the following ancestral properties viz., 1. Plot No.12 in 1st Street, Plot No.15 in 2nd Street and 150 cents land in Ottiyambakkam Main Road behind Jeppiar College, 4. 100 cents land in Padur Village of Old Mahabalipuram Road. The original documents are with Ellammal and her son in law Jagannathan and Rani. Till her death on 28.11.1983, Nallayiammal was in absolute possession and enjoyment of the above said properties. After the death of Nallayiammal, the 1st defendant and one Durgiammal, being the surviving legal heirs of Nallaiyiammal, inherited



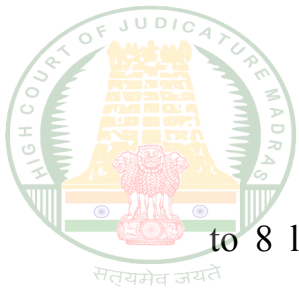
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the same and has been in possession and enjoyment of the above said properties.

b) Apart from that, plaintiff's grandmother owned properties at Padur, Arasangeni, immovable properties at Kancheepuram, Ottiyambakkam and Thousand Lights morefully described in the B schedule to the plaint. The plaintiff requested the 1st defendant to allot 1/8th share and separate possession of the suit properties, inspire of her request, the defendants failed to effect partition thereby deprived her legitimate share of the suit properties.

c) The first defendant and her sister illegally partitioned the ancestral properties and sold away one of such lands in S.No.67/3 measuring 0.23-1/2 cents illegally by executing sale deed in favour of one Sekar on 27.12.2006. The partition deed dated 14.06.2007 is illegal one and non est. The sale deed is sham and nominal and liable to be set aside.

d) The Plaintiff's father purchased a property on 19.12.1962 bearing Door No.22, West Mada Street, P.V.Koil, Ayanavaram, Chennai measuring 2400 sq.ft., out of ancestral funds and put up construction thereon and hence this property is also an ancestral property and no self acquired property of late Kanniah Naidu. During 2006, she came to know that Ayanavaram property had been settled by her late father on 26.09.1984 in the names of defendants 2



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to 8 leaving out the plaintiff. The property in Ayanavaram was purchased during 1962 by plaintiff's father by selling the ancestral properties in Kandigai village, but treating it as self acquired property he settled the same in favour of defendants 2 to 8. hence, the settlement deed executed is illegal and non-est in the eye of law.

e)The plaintiff married one Hanumanthan and since she could not bear the physical and mental torture meted out by her husband, she left her husband with her sons and brought her daughter separately and set up an independent home. As she was not given proper treatment in her parental home, in 1986, she cohabited with one Ravichandar from 1986. Her husband died in 1990. Since the family members did not approve her cohabitation with the said Ravichander, the 1st defendant and the other defendants ill treated the plaintiff.

f) The plaintiff and the defendants are in joint possession of the entire properties, therefore the plaintiff and the defendants are entitled to 1/8th share each in the suit properties and unless it is divided by metes and bounds and each of the sharers are allotted their respective 1/8th share, the partition cannot be just and equal. Hence, the plaintiff has filed the present suit for partition of her share in the suit schedule properties.



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3. The Written Statement filed by the defendants 1, 3, 5 and 6 is as

follows:

(a) There is no Plot No.12 in the 1st street, nor Plot No.15 in the 2nd Street as stated in the plaint and they do not exist at all and they are imaginary. 150 cents of land in Ottiyanbakkam measuring actually 145 cents was sold by Nallayi Ammal. 100 cents of land in Padur (OMR Road) as stated is false. The land actually measuring 45 cents was purchased by the 1st defendant around 25 years ago from her aunt Mrs.Salammal and it was sold long back in order to clear the debts of the family. The original documents are not available with the 1st defendant, her son in law Jagannathan and Rani. There are no properties available as stated in para 4 of the plaint and the plaintiff does not have any right in respect of the properties mentioned. The plaint averments are vague. The plaintiff has no locus standi to question the partition of the absolute properties of the 1st defendant and the sale deed executed, pursuant to the said partition is legally valid. The sale cannot be set aside as the plaintiff has no right in respect of the property belonging to the 1st defendant. The Ayanavaram property measuring 2400 sq.ft. was self acquired property of Kannaya Naidu and it was purchased on his own funds and there is no question of ancestral rights in the said property.



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b) The plaintiff was given in marriage to one Mr.Hanumanthan. The said Hanumanthan was employed in Tamil Nadu Electricity Board. He was a normal person and there was no mental illness as stated by the plaintiff. The plaintiff had illegal affair with one Ravichander who was the neighbour and the plaintiff eloped in the year 1986 leaving the house and left the said Hanumanthan in lurch. He died during 1990. The plaintiff never bothered to inform her parents about her whereabouts and on her own she left with the said Ravichander. The plaintiff was never ill treated as stated in the plaint.

c) The plaintiff demanded Rs.5 lakhs from the 1st defendant and since the 1st defendant was not in a position to pay the said amount, she filed the above suit to harass the defendants for the reasons best known to her. The 1st defendant is struggling for her livelihood and she is incurring medical expenses. The father of the plaintiff had every right to deal with the Ayanavaram property and it is strange on the part of the plaintiff to state that she came to know about the settlement of the property in the year 2006. The plaintiff's father died in the year 1990. During the life time of Kannaya Naidu, he had settled the self acquired property in the year 1984 and the plaintiff has no right to question the same after a period of 26years which would clearly establish that the plaintiff does not have any right in respect of the property.



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The plaintiff's father Kannaiya Naidu sold the self acquired property to his elder daughter on 08.03.1984 and the plaintiff does not have any right in the said property.

d) In respect of item B property, it is the property derived by the 1st defendant from her father Murugesan Naidu and therefore the plaintiff has no right over the same as the property belongs to the 1st defendant absolutely. The plaint is vague without any correct details and the plaint is liable to be dismissed in limine with exemplary costs. The plaintiff has approached this Court with unclean hands and there are no bonafide for the plaintiff to make a claim for partition of the properties set out in the plaint. Under law, the plaintiff is not entitled for any share as claimed in the plaint.

e) Kanniah Naidu had settled some portion of property in Sivalingam Street which is part of Item (a) of schedule B listed in plaint to Rajeshwari and another portion to P.Kala @ Devika and this has been not brought in the plaint. Further, another portion in the same property was purchased by Indirani and Rani from Kanniah naidu. This fact was also omitted by the plaintiff. The schedule items stated in the plaint are all false and not true. Therefore the suit may be dismissed with exemplary costs.



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4. The Written Statement filed by the 7th defendant, adopted by the 4th defendant is as follows:

a) The 1st defendant has not given any share of sale consideration to any of her legal heirs including this defendants for the sale of land in S.No.67/3. The sale deed executed in favour of Sekar is for very low consideration and the partition deed executed between Ellammal and Durgiammal are sham and nominal. The father of plaintiff and defendants 2 to 7 purchased the Ayanvaram property measuring 2400 sq.ft. from and out of his ancestral properties. The plaintiff was given marriage to one Hanumanthan during 1972 and she had a daughter and three sons.

b) their father Kanniah Naidu executed a settlement deed on 26.09.1984 under a registered document in favour of 7th defendant in respect of vacant house site in Vellalar Street, Ayanpuram, Chennai to an extent of 550 sq.ft., but this settlement is an eye wash to this defendant since the other properties having larger extent has been given to the sons of Kanniya Naidu which is not valid under law. Kannaiya Naidu has not partitioned his property which are ancestral in nature to his legal heirs as per law. The 4th defendant was given a property by way of sale deed by his father under registered sale deed dated 08.03.1984 to an extent of 540 sq.ft. vacant house site in Sivalinga Achari



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Street, Ayanavaram, Chennai which is also executed to cheat the shares of the female heirs of Kannaiya Naidu. The entire properties are HUF in nature and are enjoyed in common by all the legal heirs of Late Kannaiya Naidu and 1st defendant herein. Since all the properties are ancestral in nature, the properties should be divided equally as per law to the plaintiff and defendants 1 to 7 and hence the suit properties will have to be divided into 8 equal shares.

5. Heard, the learned counsel for both parties. The defendants 1, 3 and 10 were died. Defendants 2,4,7,11 to 13 were set exparte on 12.12.2023.

6. On 27.04.2011, upon perusal of the pleadings and other materials on record, this court has framed the following issues for consideration:

1. *Whether the partition deed executed between the 1st defendant and her sister is valid?*
2. *Whether the sale deed executed on 27.12.2006 by the 1st defendant is valid, after execution of partition deed?*
3. *Whether the sale deed executed by the 1st defendant is binding the plaintiff and other defendants?*
4. *Whether the settlement deed dated 26.09.2004 executed by the late father of the plaintiff in favour of the defendants 2 to 7 is valid?*
5. *Whether the plaintiff is liable to get 1/8th share from the schedule mentioned properties?*



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6. *To what other relief the plaintiff is entitled to?*

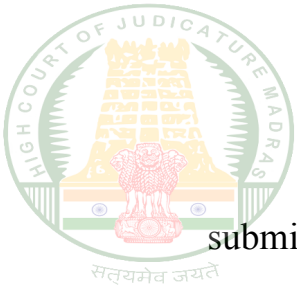
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7. On the side of the Plaintiff, witnesses PW1 and PW2 were examined and exhibits Ex.P.1 to Ex.P.12 were marked and on the side of the defendants, DW1 was examined and no exhibits were marked.

8. The learned counsel for the plaintiff submitted that Ex.P1 -Ayanavaram property was purchased by the plaintiff's father out of sale proceedings of Kandigai lands and Ex.P3 and Ex.P5 properties are ancestral properties of the 1st defendant whereas the plaintiff was not given her respective shares in the suit schedule properties.

9. It has been further submitted that despite the suit properties have been settled between the legal heirs of the 1st defendant, she was not given any share in the properties, as she got married to one Ravichandran and left the house. Despite notice was served to the 1st defendant, she neither received any reply nor response, hence she filed the present suit seeking for the partition in the suit schedule properties. Hence the suit may be decreed by granting plaintiff's 1/8th share in the suit schedule properties.

10. The learned counsel for the defendants 1,2,3,5,6,8,9,10 has



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submitted that the suit schedule properties are not ancestral properties as stated by the plaintiff. Further, the Plaintiff has not produced any evidence to prove the same. While some of the properties are non existent and false and no evidence was adduced to prove the same, the plaintiff has claimed her respective share therein. Further, Item (a) of B schedule is self acquired property of Kannaiya Naidu and hence, there is no question of ancestral rights in the said property. In the event of the partition deed effected between the 1st defendant and her sister Durgiammal, since it is the absolute property for both of them, they have every right to sell to any third party. Hence, the plaintiff cannot claim for partition of the absolute property of the 1st defendant under section 14 of the Hindu Succession Act,

11. It has been further submitted that the plaintiff has not proved by way of documentary evidence that the property settled by the plaintiff's father are ancestral property and the plaintiff is duped of her share in the same. Hence, the suit is liable to be dismissed.

12. On perusal of the plaint, it is seen that the plaintiff seeks share



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in the A suit schedule properties in Plot No.12 in the 1st street, Plot No.15 in the 2nd street, 150 cents land in Ottiyambakkam and 100 cents land in Padur Village. However, she did not produce any oral and documentary evidence to prove the same.

13. On perusal of the records, it is seen that Ex.P6- partition deed was executed on 14.06.2007 between the 1st defendant and her sister one Durgiammal which belonged to their mother. Hence, the plaintiff seeks her 1/8th share in the said suit properties claiming that they are ancestral properties. Further, she seeks her share in the suit property belonged to her father-Kanniya Naidu, vide Ex.P1, claiming over it as it was purchased by selling Kandigai lands belonged to her ancestor.

14. It is seen from Ex.P6 that the 1st defendant and her sister Dugiammal have partitioned their mother properties between them by way of partition deed. Furthermore, the plaintiff has not produced any documents that the suit properties partitioned between the 1st defendant and her sister, are the ancestral properties. In the evidence of P.W1 and P.W2, they have not clearly averred the details of the suit properties belonged to their ancestors and filed



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proper documents accordingly. As the partition deed executed between the 1st defendant and her sister, they became the absolute owner of the properties. As they were the absolute owners of the suit properties, they have every right to settle and sell anyone. Hence, the plaintiff has no right to claim any share in the suit properties which is already partitioned between the 1st defendant and her sister. Hence, the partition deed is valid. Accordingly, issue No.1 is answered.

15.It is contended by the plaintiff that the mother of the plaintiff and her sister had sold the property to one Mr. Sekhar on 27.12.2006 vide Ex.P5. Thereafter, they had executed the Partition Deed settling various properties between them on 14.06.2007 vide Ex.P6 including the property sold to Mr.Sekhar. Whereas, the plaintiff has not impleaded the purchaser Mr.Sekhar, in the suit and the plaintiff has not sought any prayer in the plaint to declare the sale deed as null and void. Under such circumstances, the plaintiff cannot seek any remedy in this regard. Hence, the said sale deed is binding on the plaintiff and the defendants. Accordingly, issue No.2 and 3 are answered.

16. Despite P.W.1 deposed that the said Ayanavarm Property was



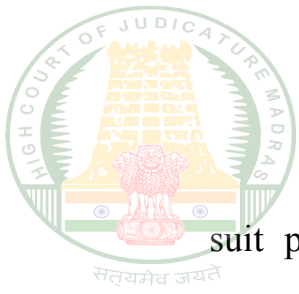
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purchased by her father by selling her paternal grandfather property situated at

WEB COPY Kandigai, she has not produced any documents relating to Kandigai properties.

Further, Ex.P1, shows that the suit property had been purchased by the plaintiff's father from the vendor from his own source of income and it is self acquired property of her father and she did not produce any documents to prove that the property is the ancestral property. To prove the same, D.W1 in her evidence deposed that her husband only purchased the Ayanavaram Property. Further she added that since the plaintiff left her maternal home and that is why her husband did not give any share in the Ayanavaram property. While being so, the father of the plaintiff has every right to settle or sell his absolute property to any one. In the said suit properties, the plaintiff cannot seek her share while he is not interested to give share of the plaintiff. Hence, the Settlement Deed dated 26.09.1984 executed by the late father of the plaintiff is valid. Accordingly, Issue No.4 is answered.

17.Further, once the suit properties have been settled between the mother of the plaintiff and her sister, the same becomes the absolute property to them. As they were the absolute owner of the suit properties, they have every right to settle and sell to anyone. Despite the plaintiff contends that the



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suit properties are derived from her ancestor, she has not produced any documentary evidence to prove the same. Hence, the plaintiff does not have any right over 1/8th share or any relief over the suit schedule properties. Accordingly, Issue No.5 and 6 are answered.

18. In the result, the suit is dismissed. No costs.

.03.2025

Index :yes/no
Speaking/non-speaking
Internet- yes/no
msr/lbm



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1. List of Witnesses examined on the side of Plaintiffs and Defendants:

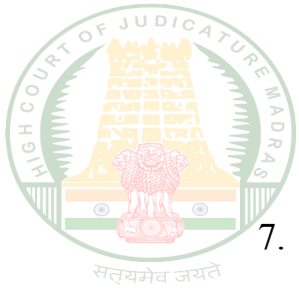
PW1- Mrs.Lalitha

PW2- Mr.Purushothaman

DW1- Mrs.Ellammal

2. List of Documents marked on the side of the plaintiffs and defendants:

1. Ex.P.1 is the certified copy of sale deed dated 19.12.1962 bearing Doc.No.4092 of 1962 executed in favour of the plaintiff's father
2. Ex.P.2 is the certified copy of settlement deed dated 26.09.1984 bearing Doc.No.3320 of 1984 executed by Kanniah Naidu
3. Ex.P.3 is the certified copy of sale deed dated 20.06.1986 bearing Doc.No.300/1986 executed by Durgaiammal and Ellammal;
4. Ex.P.4 is the office copy of the legalnotice dated 15.05.2006 (wrongly dat typed as 15.05.2096) sent by PW1 to 1st defendant
5. Ex.P.5 is the certified copy of sale deed dated 27.12.2006 bearing Doc.No.11594 of 2006 executed by Ellammal in favour of Shekar.
6. Ex.P.6 is the certified copy of partition deed dated 14.06.2007 bearing Doc.No.6171/2007 between Ellammal and Durgaiammal



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7. Ex.P.7 is the original death certificate of Kanniah Naiu died on

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8. Ex.P.8 is the copy of the field map of Arasankazhani Village

9. Ex.P.9 is the copy of the Chitta with regard to Arasankazhani Village

10.Ex.P.10 is he copy of the chitta with regard to Arasankazhani Village

11.Ex.P.11 Series (6 nos.) are the original encumbrance certificate for the
period 27.12.2006 and 14.06.2007

12.Ex.P.12 is the copy of the letter for issue of legal heirship certificate

3.No documents have been filed on the side of the defendants.

26.03.2025

msr/lbm



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