



C.S Nos.781 of 2012 & 275 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.781 of 2012
and
C.S No.275 of 2013

C.S No.781 of 2012

S.S.Arumugamsamy

... Plaintiff

..Vs..

1.Anbarasi

2.Ganesha Sundarapandian

3.Vetriselvi

4.Selva Bharathi

5.N.Inbarathinam

6.Raja

7.Ramesh

8.Ravi

9.Jai Singh Victor

10.Solai Alagu

... Defendants

C.S No.275 of 2013



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1.P.Anbarasi

2.T.Vetriselvi

3.P.Selvabharathi

4.P.Ganesa Sundara Pandian

... Plaintiffs

..Vs..

S.S.Arumugasamy

.. Defendant

Prayer in C.S No.781 of 2012: Civil Suit has been filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of Original Side Rules, praying to pass the following judgement and decree against the defendants 1 to 4:

a) dividing the entire suit schedule property by way of partition into two equal shares by metes and bounds and allot one share to the plaintiff.

b) directing the defendants to pay past mesne profit from 13.06.2009 till date of suit as determined by this Court after holding enquiry.

c) directing the defendants to pay the future mesne profits from the date of suit till the partition by metes and bounds.

c) for costs.

Prayer in C.S No.275 of 2013: Civil Suit has been filed under Order XXIV Rule 1 of O.S Rules 1956 read with Order VII Rule 1 of CPC, praying to pass the following judgement and decree against the defendant:

a) for a declaration that the plaintiffs are each entitled to 1/4th share in the half share of their late father, S.S.Palanisamy in the properties



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more particularly described in the schedules 'A' to 'L' .

b) for partition by metes and bounds of the properties more particularly described in the schedule 'A' to 'G', 'I' and 'L' [and for allotment to each of the plaintiffs their 1/4th share in the half share of late S.S.Palanisamy].

c) for appointment of an Advocate Commissioner to partition the suit schedule properties more particularly described in the schedules "A" to "L" and for allotment to each of the plaintiffs of their 1/4th share in the half share of late S.S.Palansamy.

d) for recovery of a sum of Rs.50,00,000/- from the defendant towards mesne profits in respect of the properties more particularly described in the schedules "D", "J", "K" and "L" for a period three years prior to the filing of the above suit, and also to pay each of the plaintiffs 1/4th share in the half share of the late S.S.Palaniswamy, and also future mesne profits at the rate to be determined by this Court.

e) directing the defendant to render proper accounts of the income derived from the income of the business run in the name of [1] Hotel Pandia's at No.527, T.H. Road, Old Washermenpet, Chennai-600 021, [2] Hotel Pandia's at No.189, Arcot Road, Chennai-600 024, [3] Hotel Pandias at Door No.5, Cemeny Road, Royapuram, Chennai-600 013, and [4] Pandias Foods at Door Nos.33 and 34, Muthamizh Nagar, 7th Block, 9th Street, Kodungaiyur, Chennai-600 118, more particularly described in the schedules "D", "J", "K" and "L".

f) to appoint as an Advocate Commissioner to ascertain the income as per the defendant's Account Books, for a period of three years prior to



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the filing of the suit properties, of the following businesses, namely [1] Hotel Pandia's at No.527, Thiruvotiyur High Road, Old Washermenpet, Chennai-600 021, [2] Hotel Pandia's at No.189, Arcot Road, Chennai-600 024, and [3] Hotel Pandias at Door No.5, Cementry Road, Royapuram, Chennai-600 013, and [4] Pandias Foods at Door Nos.33 and 34, Muthamizh Nagar, 7th Block, 9th Street, Kodungaiyur, Chennai-600 118 more particularly described in the schedule "D", "J", "K" and "L" and to pay each of the plaintiffs in their 1/4th share in half share of late S.S.Palanisamy.

g) directing the defendant to deposit into the Hon'ble Court all the original documents in the hands of the defendant in respect of the suit schedule properties more particularly described in Schedules "A" to "J" in the above suit.

h) for a consequential permanent injunction, restraining the defendant, their men, agents, servants or any person from alienating in any manner, charging or encumbering the suit schedule properties more particularly described in the schedules "A" to "L".

i) for costs.

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For Plaintiff : Mr. R.N.Amarnath
For Defendants : Mr.Ashok Menon for D1, D2 & D4
Mr.B.Balachandran for D3
(in C.S No.781 of 2012)

For Plaintiffs : Mr.Ashok Menon
For Defendant : Mr.R.N.Amarnath
(in C.S No.275 of 2013)



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COMMON JUDGMENT

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These Civil Suits have been filed for partition, past mesne profits, future mesne profits and for costs.

2. The plaintiff and defendants 1 to 4 in C.S. No.781 of 2012 are the defendant and plaintiffs in C.S. No.275 of 2013 respectively and the Plaintiff averment in C.S. No.781 of 2012 reflects as written statement in C.S. No.275 of 2013. The Plaintiff averment in C.S. No.275 of 2013 reflects as written statement in C.S. No.781 of 2012. The parties in both the suits are same and therefore, both the suits have been jointly tried and evidence has been recorded in C.S. No.275 of 2013. For the sake of convenience, the parties are referred to as per the rank stated in C.S. No.275 of 2013.

3. The case of the Plaintiff, as set out, in the plaint is as follows:-

i) The plaintiffs states that late S.S.Palanisamy expired at Chennai on 13.06.2009 leaving behind his surviving legal heirs namely, the plaintiffs 1 to 4. His father late S.Subbiah Nadar expired on 10.12.2001. Late Muthammal, wife of late S.Subbiah Nadar and mother of late S.S.Palanisamy expired on 20.03.1986. Late S.S.Palanisamy and his



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brothers S.S.Veerapandian, S.S.Pandian, S.S.Duraipandian and the defendant herein did business in common as rice merchants and in the sale of provisions, and out of the monies then generated, they purchased some properties and also started some businesses. Thereafter, late S.S.Palanisamy and his four brothers including the defendant herein executed a deed of partition on 11.08.1995 registered as Document No.1845 of 1995. The properties mentioned in schedule 'A' as per the partition deed as follows:

(a) Land and building at Door No.22, Thandavaraya Gramani Street, Tondiarpet, Chennai-600 021,

b) land and building at Door No.6, Adam Sahib Street, Royapuram, Chennai-13 and

c) land and building at No.8, 2nd Lane, Singara Garden, Old Washermenpet, Chennai-600 021 were allotted to late S.S.Palanisamy, S.S.Durai Pandian and the defendant herein respectively. Thereafter, on 01.01.1996, a settlement was arrived at in the office of the North Madras Merchant's Association between the sons of late S.Subbiah Nadar, and the following properties and business were allotted jointly to late



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S.S.Palanisamy, Duraipandian and the defendant.

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a] Land of an extent of 5 grounds 985 sq.ft. situated at Ilayamudali Street, Old Washermenpet, Chennai-600 021,

b] 3/5th share of land in an extent of 7 acres and 48 cents situated at Vanniambakkam Village, Ponneri Taluk,

c] Sweet Stall business under the name and style of Pandian Sweet Stall at No.2, Mannarswamy Koil Street, Royapuram, Chennai-600 013,

d] Provision Shop situated at No.20, Jandar Pillaiyar Koil Street, Old Washermenpet, Chennai-600021,

e] STD Booth business at No.14, Jandar Pillaiyar Koil Street, Old Washermenpet, Chennai-600 021.

(ii).From the sale proceeds of the premises No.6, Adam Sahib Street, Royapuram, as also premises No.22, Thandavaraya Gramani Street, Tondiarpet, Chennai-600 021, the property being vacant land of an extent of 3 grounds and 207 sq.ft. at No.107, G.A Road, Chennai was purchased. From and out of the cash obtained from S.S.Pandian at the time of execution of the partition deed dated 11.8.1995 and from the monies received on account of the closure of children's savings account, besides the rents earned from the property at No.8, 2nd Lane, Singara Garden House, Washermenpet, Chennai-600 021, and the income earned from the



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business of Pandian Sweet Stall at No.2, M.S Koil Street, Royapuram, Chennai-600 013, a new business at No.527, Thiruvottiyur High Road, Old Washermenpet, Chennai-600 021 (which property had been taken on lease) under the name and style of Hotel Pandia's had been formed, as also a Sweet Stall at Cemetery Road under the name and style of 'Pandian Sweet Stall'. Thereafter, it so transpired that S.S.Durai Pandian wanted to separate from the other two brothers and as per mutual discussions another partition deed was executed on 28.11.1997 between S.S.Duraipandian, late S.S.Palanisamy and the defendant herein registered as Document No.356 of 1998 in the office of the Sub Registrar, Royapuram.

(iii).By and through the partition deed dated 28.11.1997, the below mentioned properties were allotted to late S.S.Palanisamy and the defendant herein:

a] Land and Building measuring an extent of 168 sq.ft. at Door No.13, (Old No.5) at Singara Garden 6th Lane, Old Washermanpet, 182 sq.ft. at Door No.1/2, at Singara Garden 6th Lane and 1067 sqft. at No.8, Singara Garden 2nd Lane, in all measuring at 1417 sq.ft.

b] Vacant land measuring an extent of 2 grounds and 1264 sq;ft. at No.107, Gollavar Agraharam Road, Old Washermenpet, and an extent of 935 sq.ft. at No.36, Kappal Polu Street, Old Washermenpet,



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Chennai-21, and an extent of 420 sq.ft. of 50% undivided share in the passage at No.36, Kappal Polu Street, Old Washermenpet, Chennai-21 and an extent of 198 sq.ft. of vacant land situated in between the Door No.107 and 36 above referred to in all measuring an extent of 3 grounds and 207 sq.ft.

c] Vacant land measuring an extent of 5 grounds and 985 sq.ft. situated at Korrukkupet bearing Plot Nos.14, 27, 27A, 31, 32, 34, 35A, 42, 47, and 49 in Ilaya Mudali Street, Chennai-600 021.

d] Business and goodwill of business at No.527, Thiruvottiyur High Road, Old Washermenpet, Chennai-600 021, under the name and style of 'Hotel Pandia's [leasehold property]

e] Provision shop business at No.20, Jandar Pillaiyar Koil Street, Old Washermenpet, Chennai-600 01 [leasehold property]

f] STD booth business at No.41, Jandar Pillaiyar Koil Street, Old Washermenpet, Chennai-600 021[leasehold property]

(iv).Late Palanisamy and the defendant were in good relationship. Due to this reason late S.S.Palanisamy and the defendant herein jointly purchased schedules 'H' and 'I' properties in the name of the defendant. After the death of S.S.Palanisamy, the defendant purchased schedule 'L' property in the name of his wife. All the above purchases had been made from the income derived from Hotel Pandias described in Schedule 'D'. The defendant also took on lease the property described in



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schedules 'J' and 'K'. The advance amount in both the cases were paid from the income derived from Hotel Pandias [schedule 'D' property]. All the original documents pertaining to the properties described in schedules 'A' to 'L' are in the custody of the defendant herein. As per the partition deed dated 25.11.1997 late S.S.Palanisamy and the defendant were running the hotel business without any hindrance. In fact, the business developed and grew in remarkable fashion. Most unfortunately in October 1999, the defendant developed some enmity with late S.S.Palanisamy and started picking up quarrels with him for no rhyme or reason. The defendant went around telling everybody that he was entitled to the entire income from the hotel business. Late S.S.Palanisamy was taken aback at this development as all along he had not had any problem with the defendant and it is obvious that the defendant was reacting in this manner due to some misunderstanding or perhaps because some third parties had deliberately poisoned the defendant against late S.S.Palanisamy. On 01.01.1999, when late S.S.Palanisamy was doing business at Hotel Pandiyas at No.527, Thiruvottiur High Road, Chennai-600 021, the defendant deliberately created a scene and abused him. Thereafter, late S.S.Palanisamy was forced to file O.S No.6406 of 1999 in City Civil Court, Chennai against the



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defendant for permanent injunction restraining him from interfering with the said hotel business. Subsequently, the said suit was withdrawn with a liberty to file a fresh suit. Eventhough late S.S.Palanisamy continued the said business along with the defendant jointly, the defendant was keeping the account books with him and refused to permit late S.S.Palanisamy to peruse the same. The defendant deliberately did not declare the monies earned or disclose the statement of accounts inspite of repeated requests by late S.S.Palanisamy. During his life time, late S.S.Palanisamy had on several occasions demanded his share and also had requested the defendant to submit the statement of accounts in respect of the hotel business from in or about the month of January 1999. Instead of disclosing the profit and loss of the business, the defendant started given pin pricks to late S.S.Palanisamy and prevented him from involving himself in the work of the Hotel Pandia's from November 1999. The defendant infact on a few occasions used third degree methods to prevent late S.S.Palanisamy from interfering the Hotel Pandia's business because of which late S.S.Palanisamy suffered a lot mentally and physically.

v.Out of the earnings from Hotel Pandia's besides the rental income from No.8, Singara Garden, the following properties had been purchased.



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- a] House property at 233/9, T.H Road, Tondiarpet, Chennai-600 081,
- b] Vacant land at No.529, T.H Road, (adjacent to Pandia's Hotel], Old Washermenpet, Chennai-600 021,
- c] Iyengar Bakery, No.335, T.H Road, Old Washermenpet, Chennai-600 021,
- d] Hotel Annachi at New No.748, T.H Road, Old Washermenpet, Chennai-600 021.

vi)With the proceeds received from the sale of Iyengar Bakery, No.335, T.H Road, Old Washermenpet, Chennai-600 021 and Hotel Annachi at New No.748, T.H Road, Old Washermenpet, Chennai-600 021, a new Hotel under the name and style of Hotel Pandias at No.189, Arcot Road, Chennai-600 024, was set up during the month of September 2003. The defendant had no other business and income other than the income from Hotel Pandia's in No.527 and in No.189, Arcot Road. The defendant earned all the monies only from the income of the joint properties and business of late S.S.Palanisamy.

vii).The plaintiff herein being the widow and children of late S.S.Palanisamy have 50% share in the following properties:



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a] land and building measuring an extent of 168 sq.ft. at Door No.13, (Old No.5) at Singara Garden 6th Lane, Old Washermenpet, 182 sq.ft. at Door No.1/2, at Singara Garden 6th Lane and 1067 sq.ft. at No.8, Singara Garden 2nd Lane, in all measuring at 1417 sq.ft,

b] Three grounds of vacant land at No.107, Gollvar Agraharam Road, Old Washermenpet, Chennai-600 021,

c] House at No.233/9. T.H Road, Tondiarpet, Chennai-600 021,

d] Land at Illaya Mudali Street, Korrukupet, Chennai-600 021 of an extent of 5 grounds and 985 sq.ft,

e] Bombay Hotel now named as Hotel Anand at New No.1061, T.H Road, Old Washermenpet, Chennai-600 021, f] Vacant land at 529, T.H Road, Chennai-600 021.

The plaintiffs have 50% share in the below mentioned properties:

a] Provision Shop at No.20, J.P Koil Street, Old Washermenpet, Chennai-600 021, (which the plaintiffs have given on lease]

b] Pandia's Hotel at No.527, T.H Road, Old Washermenpet, Chennai-600 021 [run by the defendant]

c] Pandia's Hotel at 189, Arcot Road, Chennai-600 024 [Run by the defendant]

d] STD Booth at No.14, J.P Koil Street, Old Washermenpet, Chennai-600 021, [in possession of S.S.Pandian]

The following properties are in possession of the plaintiffs:

a] Door No.13, (Old No.5) at Singara Garden 6th Lane, Old Washermenpet, Chennai-600 021, mentioned in Schedule 'a' property.

b] Vacant land at No.107, G.A.Road, Old Washermenpet, Chennai-600 021, mentioned in schedule 'B' property.

c] Provision shop at No.20, J.P Koil Street, mentioned in Schedule 'E' property.

The following properties are in possession of the defendant:



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- a) a] Vacant land at Plot Nos.42, 47, and 49 in Illaya Mudali Street, Korukkupet, Old Washermenpet, Chennai-600 021, mentioned in Schedule 'C' property.
- b] No.527, T.H Road, Old Washermenpet, Chennai-600 021, under the name and style of "Hotel Pandia's" mentioned in Schedule 'Q' property.
- c] STD Booth at No.42, J.P Koil Street, Old Washermenpet, Chennai-600 021, mentioned in Schedule 'F' property.
- d] House at No.223/9, T.H Road, Tondiarpet, Chennai-600 081, mentioned in schedule 'G' property.
- e] No.529, T.H Road, Old Washermenpet, Chennai-600 021, mentioned in Schedule 'I' property.
- f] Bombay Hotel, now named as Hotel Anand, at New No.1061, T.H Road, Old Washermenpet, Chennai-600 021, mentioned in Schedule 'H' property.
- g] Pandia's Hotel at No.189, Arcot Road, Chennai-600 024, mentioned in schedule 'J' property.
- h] Hotel Pandias at Door No.5, Cementry Road, Royapuram, Chennai-600 013, mentioned in Schedule 'K' property.
- i] Pandias Foods at Door Nos.33 and 35, Muthamizh Nagar, 7th Block, 9th Street, Kodungaiyur, Chennai-600 118, mentioned in Schedule 'L' property.

viii)The defendant changed the constitution of the said hotel business run under the name and style of Hotel Pandias without the consent of late S.S.Palanisamy herein from the partnership firm as sole monetary benefits and deceived late S.S.Palanisamy in this manner. The defendant also changed the Registration Certificate Number from



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1221260/97-98 to 1221368/1999-2000 in respect of the said Hotel business in his favour instead of renewing the Registration Certificate in the name of the firm. Late S.S.Palanisamy has also preferred a complaint against the grant of new Registration Certificate No.1221368/1999-2000 and lodged the same before the Special Commissioner and Commissioner of Commercial Taxes, Chennai and the enquiry is also still pending before them. Late S.S.Palanisamy and the defendant were carrying on business under the name and style of "Hotel Pandia's" at No.527, T.H Road and they were gaining a profit of Rs.18,00,000/- per annum approximately in the year 1997 and 1998. The defendant had filed a suit in C.S No.781 of 2012 against the plaintiffs for a partition in respect of the schedules 'A', 'B', 'C', 'E' and 'F' more particularly described in the present plaint. The defendant had deliberately suppressed in the above suit, the properties described in schedules 'D', 'G', 'H', 'I', 'J', 'K' and 'L' in the present plaint. The plaintiffs have therefore no choice but to file the present suit for partition of the properties in which the plaintiffs have a 50% share.

ix)The plaintiffs are reliably informed that the defendant is earning a net profit of Rs.48,00,000/- per annum from the businesses namely i] Hotel Pandia's at No.527, T.H Road, Chennai-600 021, ii] Hotel Pandia's at



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No.189, Arcot Road, Chennai-600 024 and iii] Hotel Pandias at Door No.5, Cementry Road, Royapuram, Chennai-600 013 and iv] Pandiaas Foods at Door Nos.33 and 35, Muthamizh Nagar, 7th Block, 9th Street, Kodungaiyur, Chennai-600 118. Clearly therefore the net profit for the last 3 years would amount to Rs.1,44,00,000/- and half of the same which the plaintiffs are entitled being the half share of late S.S.Palanisamy for a period of 3 years prior to the filing of the suit would be Rs.72,00,000/-. The plaintiffs are each entitled to 1/4th share in the above sum. However, for the purpose of this case, the plaintiffs are restricting the claim for their share to a period of 3 years to the filing of the suit at Rs.50,00,000/-, the same being 1/2 share of late S.S.Palanisamy for the aforesaid 3 years period. Hence the suit.

4.The case of the Defendant, in a nutshell, as set out in his written statement, is as follows:-

i).The plaintiff's four blood brothers are 1) S.S.Veerapandian, 2) S.S.Pandian, 3) S.S.Durai Pandian and 4) S.S.Palanisamy. The schedule mentioned properties among other properties were acquired and enjoyed



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jointly by all the said five sons of late S.S.Subbiah Nadar and being joint properties, all of them are entitled to equal share. The plaintiff item No.1 to 3 of the properties were purchased by the sons of Subbiah Nadar except S.S.Veerapandian. At the first instance, two out of five brothers,namely 1) S.S.Veerapandian, 2) S.S.Pandiyan decided to separate and divide the properties and accordingly, a partition was effected by mutual consent between the said five brothers on 11.8.1995. The said S.S.Pandiyan and S.S.Veerapandi got divided while the remaining three brothers namely, S.S.Duraipandian, S.S.Palanichamy and S.S.Arumugamsamy, the plaintiff herein, remained joint and the said three brothers were allotted "A" schedule properties in and by a deed of partition dated 11.8.1995 and the said three brothers remained jointly entitled to equal share in the said properties described in "A" schedule, in the said registered partition deed dated 11.8.1995 registered as document No.1845/1995, SRO, Royapuram.

ii).The said three brothers continued to hold jointly the said "A" schedule properties till S.S.Duraipandian demanded partition of his undivided 1/3rd share therein. Accordingly, the said three brothers again effected division among themselves in and by a deed of partition dated 28.11.1997 registered as document No.350 of 1998. In terms of the said



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instrument of partition, S.S.Duraipandian was allotted "A" schedule in the said partition deed while S.S.Palanisamy and the the defendant who decided to remain joint were allotted "B" schedule. The defendant and his brother late S.S.Palanisamy remained jointly and each is entitled to equal share in the said "B" schedule which is the suit schedule properties in the present suit and also three businesses carried on in rental premises are:

a) a provision store business carried on at No.20, Jander Pillaiyar Koil Street, Old Washermenpet, Chennai with lease hold right and accessories.

b) a STD booth at No.14, Janter Pillaiyar Koil Street, Old Washermenpet, Chennai, with lease hold right and accessories

c) Hotel business in the name and style of "Hotel Pandys" carried on at door no.527, Thiruvotriyur High Road, Old Washermenpet, Chennai.

iii)After the execution of partition deed dated 28.11.1997, the defendant was not having any income. To eke his livelihood, the defendant was doing the hotel business by running a small hotel. The said S.S.Palanisamy was not helping the defendant to do the hotel business. The defendant exert his own physical labour and was carrying on the said



iv). During his life time, S.S.Palanisamy who managed the entire properties and business on behalf of joint owners shared the entire with the defendant herein. After his demise, the plaintiffs 1 to 4



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have high handedly and by their muscle power appropriated the business profits and rental collections and income from the plaintiffs 5 to 10 herein, who are in possession. The plaintiffs 1 to 4 have to render account for the rental income and pay half share of the entire rental income to the defendant. In the plaint schedule properties Item 1 to 3, in the vacant area, the plaintiffs 1 to 4 are allowing third parties to park their four wheelers on lease and license basis by collecting parking fees. In all 30 four wheelers are parked in the area and they collected Rs.750/- per vehicle per month. The plaintiffs 1 to 4 are also getting income by leasing out the various built up area forming part of plaint schedule Item No.1 to 4 and also appropriating the income from Item No.5 and 6 of the plaint schedule properties. The plaintiffs 5 to 10 being tenants are impleaded as formal parties to the present suit as tenants in occupation and they have no right except being as tenants in occupation of respective premises in their enjoyment. The plaintiff is entitled to receive mesne profits from the defendants 1 to 4 being the rental income from 10.10.2010 and till date of division. Hence the present suit.



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5. On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

- (1) Whether the plaintiffs together and defendant is entitled to get half share in the properties A, B and C of plaintiff schedule?*
- (2) Whether the defendant is entitled to get half share of the income derived from properties in Schedule E and F of the plaint?*
- (3) Whether the plaintiff is entitled to get any share from the properties in Schedule D,G,H,I,J,K,L of the plaint?*
- (4) Whether the plaintiff is entitled to get any mesne profit from the properties in D,J,K and L?*
- (5) Whether the defendant is entitled to render accounts with respect to properties in D,J,K and L?*
- (6) What are the other reliefs the plaintiffs are entitled?*

6. On the side of the Plaintiffs, the 1st plaintiff and two other witnesses were examined as PW.1 to PW.3 and Ex.P1 to Ex.P4 were marked. On the side of the Defendant, the defendant examined himself as DW1 and marked Ex.D1 to Ex.D7.

7. The learned counsel for the plaintiffs submitted that the



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Partition Deed was executed on 28.11.1997 between S.S. Duraipandian, S.S.Palanisamy and the Defendant, as per which the properties described in Schedules A, B, C, D, E and F were allotted to S.S.Palanisamy and the Defendant. Thereafter, S.S.Palanisamy and the Defendant jointly purchased properties in H and I in the name of the Defendant and after the demise of S.S.Palanisamy, the Defendant purchased the Schedule L property in the name of his wife. All the above purchases had been made from the income derived from Hotel Pandiyas. Further, the Defendant took on lease the properties described in Schedules 'J' and 'K', with the advance amounts in both the cases being paid from the income derived from Hotel Pandias.

8.It has been further submitted that as per Exhibit D2, the Partition Deed dated 28.11.1997 late S.S. Palanisamy, and the Defendant were running the business of Hotel Pandias, and the business developed in remarkable fashion. Even though S.S.Palanisamy continued the business along with the Defendant who has kept the account books and did not disclose the income earned, and also did not pay share of the profit from the income earned to S.S.Palanisamy. Hence, he filed O.S.No.6406 of 1999



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for an interim injunction against the defendant restraining him from interfering with the Hotel business, which suit was subsequently withdrawn. Despite S.S. Palanisamy continued the business in D schedule property, the Defendant had not given any share in the profits of Hotel Pandiya's to S.S.Palanisamy during his lifetime and thereafter to his family members. Even if late S.S.Palanisamy was not permitted by the Defendant to associate with the business physically after 02.01.1998, he continued to be a partner as there was no Deed of Dissolution executed between late S.S.Palanisamy and the defendant. The Defendant did not produce in this Court either the Partnership Deed nor the Dissolution Deed, and once the Partnership was admitted, the absence of the Partnership Deed would not be material. The dissolution of the Partnership firm, Hotel Pandias would be as per the provisions of Sections 39, 40, 41, 42, 43 and 44 of the Partnership Act 1932. As the Partnership has not been dissolved, late S.S.Palanisamy, was entitled to the profits and income upto the date of his demise and thereafter the Plaintiffs herein being his legal heirs were entitled for the same. Out of the earnings from Hotel Pandiyas, and the rental income from No.8, Singara Garden, various properties were purchased as averred in the plaint.



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9.The learned counsel for the plaintiffs further submitted that the Plaintiffs being the legal heirs of S.S. Palanisamy have 50% share in the Schedules A, B, C, G, H and 1, as also 50% share in the businesses mentioned in Schedules E, D, J, F, K, and L as set out in the plaint. The Plaintiffs are in possession of the properties in Schedules A, B and E, while the Defendants are in possession of the properties in Schedules C, D, F, G, I, H, J and L. Thus, he prays the relief as sought in the suit.

10. The learned counsel for the defendant submitted that in C.S.No.781 of 2012 filed by Defendant, D Schedule property namely Hotel Business in the name and style of "Hotel Pandia's" is not included. In C.S.No.275 of 2013 filed by the Legal Heirs of S.S.Palanisamy Schedule G to L are properties which are not covered by partition deed in Ex.D2 and owned by 3rd parties in their possession and enjoyment. Further, the Schedule A, B and C are immovable properties, Schedule E and F are business carried on in rental property. Schedule E property is a rental property and is leased to 3rd party by late S.S.Palanisamy and now by his legal heirs. The Schedule F is the business carried on by both parties which has been closed down. Thus, the Defendant are agreeing on the partition of



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A, B and C Schedule which are immovable properties and also agree to share the income from E Schedule property equally.

11. It has been further submitted that as far as D Schedule property is concerned, the defendant has been carrying on Hotel business exclusively from 02.01.1998 spending his hard earned money, whole energy and time. While Late Palanisamy filed a suit in OS.No.6406 of 1999 in the Hon'ble City Civil Court, Chennai, seeking a decree for permanent injunction restraining Defendant from doing business carried on in D-Schedule property, the Trial Court dismissed the Application seeking temporary injunction in I.A.No. 16205 of 1999. The said order came to be affirmed by the Appeal Court in the Appeal. Subsequently the said suit came to be dismissed. Since Late Palanisamy was ousted from the business from 02.01.1998 which is admitted by both the parties, the legal heirs of Palanisamy cannot claim any right over the Hotel business being carried on in Plaintiff D Schedule property. The present suit in C.S.No.275 of 2013 came to be filed on 10.04.2013 which is beyond the period of limitation from 12 years from the date of ouster that is 02.01.1998.

12. The learned counsel for the defendant further submitted



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that despite the plaintiffs contended that the properties in Schedule G to L were acquired by the Defendant out of the income derived from the Hotel business carried on in the D-Schedule property, no oral or documentary evidence is produced before this Hon'ble Court to establish the same. Moreover the 3rd parties owning G to L Schedule properties are also not impleaded in the suit.

13. It has been further submitted that G and I Schedule properties belong to the Defendant's wife. As far as J-Schedule property is concerned, the said property is a partnership business carried on by Defendant's wife and children in a rental premises. As far as K-Schedule property is concerned, the said property is an exclusive business of the Defendant carried on a rental premises. As far as L-Schedule property is concerned, the Defendant's Wife and Children are partners. Further, In the H schedule property, the defendant is not having any rights over the property and he is not in the possession of the same.

14. The learned counsel for the defendant further submitted that the Plaintiffs are enjoying the Plaintiff A, B, and C schedule properties by



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leasing out the same to 3rd Parties without sharing income derived thereon with Defendant. The both parties are entitled to equal share for partition of A, B, C and E Schedule properties. As far as the F Schedule property is concerned the Late Palanisamy was carrying on business in a rental premises and after his demise his Business was closed down. As far as the D Schedule property is concerned Late Palanisamy did not participate in the business and ousted from the business and right if any is lost by limitation. As far as the other properties are concerned, the properties are in the hands of 3rd parties and this Defendant is not having any right over the property and hence the Plaintiff cannot claim any right over the property. Thus, he prays the relief as sought in the suit.

15. On perusal of the records, it is seen that by virtue of Ex.D2, the properties in the schedule of A to F are partitioned between S.S. Palanisamy and the defendant. The relationship between the parties is not in dispute. Further, it is contended by the plaintiff that the properties in G to L are purchased out of the funds derived from Pandias Hotel run in D schedule property which is allotted to S.S. Palanisamy and the defendant herein. Hence, the plaintiffs seeks half shares in the aforesaid properties.



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The defendant contends that he has been carrying on Hotel Pandias business from 02.01.1998 raising on his own funds and spending his whole energy and time. Further, no proof has been produced by the plaintiff to substantiate that the properties in Schedule G to L are purchased out of the profits from D schedule property. Hence, the plaintiffs cannot claim any right over the same.

16. With regard to the Schedule A, B and C, both the plaintiffs and the defendant admitted that both the parties are jointly entitled to the aforementioned properties. There is no dispute regarding the same and thereby both the parties are entitled to 1/2 share in the Schedule A, B and C.

17. With regard to E schedule property, both the plaintiffs and the defendant admitted that the plaintiffs have let the premises for rent and further, both the parties admitted that both the parties are having equal rights over the aforementioned property. Therefore, the defendant is entitled to 1/2 share in the income from the aforesaid property. Further, the learned counsel for the defendant contended that in so far as F schedule property is concerned, Late Palanisamy who is husband of the 1st plaintiff



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was carrying on business in a rental premises and after his demise, the business was closed down. While so, the plaintiffs have failed to produce the documents to disprove the same. Therefore, the plaintiffs are not entitled to claim any share in F Schedule property.

18.It is admitted fact that the D Schedule property is allotted to S.S. Palanisamy and the defendant as per Ex.D2. Since there was a dispute in running the hotel business, it seems that the husband of the 1st plaintiff approached the Civil Court filing O.S. No.6406 of 1999 seeking for permanent injunction restraining the defendant from doing Hotel business. To know the status of the case either it was withdrawn or dismissed, both the parties have not filed any orders passed therein. From the conduct of the husband of 1st plaintiff by filing the Civil suit, it is clear that the defendant are claiming the Schedule D adverse to that of the plaintiff, since 1999, from then no material evidence is placed before this Court to substantiate that the plaintiff and defendant are jointly running the Hotel under the Partnership as per the Indian Partnership Act, 1932. Even though the D schedule property was allotted to S.S. Palanisamy and the defendant, the plaintiffs have not produced any documents relating to the Hotel business whether it is running under Partnership Deed entered



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between S.S. Palanisamy and the defendant. It is clear from seeing Ex.D2 that the Schedule properties of A to F were partitioned between S.S. Palanisamy and the defendant wherein Hotel Pandias runs in the rental premises of D schedule property. The defendant contends that the Hotel Business run exclusively by him, the plaintiff claims to have contributed in the business in schedule D property, if that is the case, the plaintiff should have discharged burden of proof by taking steps for production of relevant documents to prove the same. However, the plaintiff miserably failed to do so. Under such circumstances, as the plaintiffs have not produced any documents to prove their case with regard to D schedule property, the plaintiffs are not entitled to claim any share in the D schedule property.

19. Further, it is stated on the side of the plaintiff that the defendant has changed the Registration Certificate Number from 1221260/97-98 to 1221368/1999-2000 in respect of the Hotel business instead of renewing the Registration certificate in the name of the Firm. In this regard, a enquiry is pending before the Special Commissioner of Commercial Taxes, Chennai. However, the plaintiffs have not filed any documents to prove the same. Further, in the dispute of the partnership



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firm in running the Pandias Hotel mentioned in the schedule D, the plaintiff has to approach the appropriate forum to get their remedy. In so far as the properties in the schedule of G to L are concerned, the plaintiffs have not filed any supporting documents to establish that the property in Schedule G to L are purchased out of the profit from D schedule property. Thereby the plaintiffs are not entitled to the share in the Schedule G to L properties.

20.In view of the aforesaid observations and having considered the facts and circumstances of the case and perused the materials available on records, the plaintiffs together and defendant is entitled to get half share in the properties A, B and C of plaint schedule. Accordingly, issue No.1 is answered. Further, the defendant is entitled to get half share of the income derived from properties in Schedule E of the plaint. Since the Business in F schedule property is closed down as per the statement of the defendant and there is no proper accounts statement filed by the defendant. He is not entitled to the same. Accordingly, Issue No.2 is answered.

21.Since appropriate documents have not been filed by the plaintiffs, therefore, the plaintiffs are not entitled to any share in the



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properties in the Schedule D,G,H,I,J,K,L of the plaint. Accordingly, issue No.3 to 5 are answered.

22. In view of the aforesaid observations and discussions, both the parties are entitled to claim $\frac{1}{2}$ share in the schedule properties A,B,C and E equally. Accordingly, issue No.6 is answered.

23.In the result, the preliminary decree is passed in C.S. No.275 of 2013 in the above terms and C.S.No.781 of 2012 is dismissed. No costs.

.04.2025

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

lbm

List of Witnesses examined on the side of the Plaintiffs:-

1. PW.1 – P.Anbarasi
2. PW.2 - S.S.Duraipandiyan
3. PW.3 - P.Chella Pandian

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

1. Ex.P1 is the computer generated death certificate of S.S.Palanisamy



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2. Ex.P2 is the original legal heir certificate of S.S.Palanisamy dated 25.06.2009.

3. Ex.P3 is the certified copy of partition deed dated 11.08.1995.

2. List of Witnesses examined on the side of the Defendant:-

DW1 - S.S.Arumugasamy

3. List of Exhibits marked on the side of the Defendant:-

1. Ex.D1 is the certified copy of partition deed executed between the sons of late S.Subbiah Nadar dated 11.08.1995

2. Ex.D2 is the certified copy of partition deed dated 28.11.1997

3. Ex.D3 is the original property tax book in the name of Deen Real Estate with respect to Item no.1 of the plaint schedule property in C.S.781 of 2012.

4. Ex.D4 is the original property tax receipt in the name of Deen Real Estate with respect to Item no.3 of the plaint schedule property in C.S.781 of 2012.

5. Ex.D5 is the office copy of legal notice with postal receipts issued by the plaintiff in C.S.781 of 2012 to all the defendants dated 23.07.2011.

6. Ex.D6 (series 3 nos.) is the returned postal covers of Ganesh Sundarapandian, Selvabharathy and Anbarasi.

7. Ex.D7 is the original postal acknowledgment card.

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A.A.NAKKIRAN, J.

lbm

Pre-Delivery Common Judgement in
C.S Nos.781 of 2012 & 275 of 2013

.04.2025