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C.S.No.215 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.11.2025
PRONOUNCED ON : 14.11.2025

CORAM
THE HONOURABLE **MR.JUSTICE P.DHANABAL**

C.S.No.215 of 2021

- 1.Saraswathi,
- 2.S.Dhanapal,
- 3.S.Palani (Died)
- 4.P.Vignesh (Minor),
S/o.Late S.Palani
Represented by his legal guardian
S.Dhanapal
- 5.P.Pavithara (Minor),
D/o.Late Palani
Represented by her legal guardian S.Dhanapal,
(Amended as per order dated 12.08.2022 in
A.No.3357/2022 and time extended as per
order date 08.09.2022).

...Plaintiffs

Vs

- 1.S.Sundar Rajan
- 2.S.Raja

1/24



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3. The Manager

Indian Bank,
5th Floor, No.66, Rajaji Salai,
Mannady Branch,
Chennai – 600 001.

...Defendants

Prayer: The Civil Suit has been filed under VII Rule 1 and 2 of CPC r/w Order IV Rule 1 of the Original Side Rules of Madras High Court, praying for a judgment and decree:

- a) To partition and allot Plaintiffs' 1/3rd share each to the first and second plaintiffs and 1/6th share each to the 4th and 5th plaintiffs over the suit schedule property by metes and bounds.
- b) To grant permanent injunction against the defendants or their men, agents, servants not to alienate or encumber the suit schedule property.
- c) To grant mandatory injunction directing the defendants to co-operate for the discharge of loans with the 3rd defendant's bank.
- d) To pass an order to direct the defendants 1 and 2 to pay the cost of the suit.



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For Plaintiffs : Mr.M.Divyanathan

For Defendants : Mr.V.Ramamurthy
for D1 and D2

No appearance for D3

JUDGMENT

This Suit has been filed by the plaintiffs under VII Rule 1 and 2 of CPC r/w Order IV Rule 1 of Original Side Rules of Madras High Court for the relief of the partition of 1/3rd share each to the first and second plaintiffs and 1/6th share each to the fourth and the fifth plaintiffs and for the grant of a permanent injunction from alienating the Suit property and also for a mandatory injunction directing the first and second defendants to co-operate for the discharge of loans with the third defendant Bank.

2. The brief facts of the case of the plaintiffs are as follow :

(a) The plaintiffs 1 to 3 and the defendants 1 and 2 are the sons and daughter of one Mr.Sriraman and Mrs.Valliammal. The Suit property was originally belonged to one Mrs.Jayalakshmi Ammal W/o. Mr.Arumuga Chettiar and Mr.Sriraman S/o. Mr.Arumuga Chettiar. The said property



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was purchased through Court auction in O.S.No.1222 of 1955 and a sale certificate was issued by the City Civil Court, Madras, dated 17.02.1958.

The said property was enjoyed by Mrs.Jayalakshmi Ammal W/o. Mr.Arumuga Chettiar and Mr.Sriraman S/o. Mr.Arumuga Chettiar. While so, Mrs.Jayalakshmi Ammal died on 07.04.1987. After her demise, her only son, namely Mr.Sriraman alone, exclusively entitled to the Suit property.

(b) The said Mr.Sriraman married one Mrs.Valliammal. The plaintiffs 1 to 3 and the defendants 1 and 2 were born to the said Mr.Sriraman and Mrs.Valliammal. The said Mr.Sriraman resided in the said property along with his four sons (i.e., plaintiffs 2 and 3 and defendants 1 and 2) and their families. The said Mr.Sriraman died intestate on 11.06.2003, leaving behind the plaintiffs 1 to 3 and the defendants 1 and 2 as his legal heirs to succeed the estate.

(c) The legal heirs of Mr.Sriraman have unanimously borrowed a housing loan of Rs.5,00,000/- (Rupees Five Lakhs only) from the third



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defendant, Indian Bank, Mannady Branch, by mortgaging the Suit property on 26.08.2004. The defendants 1 and 2 took the responsibility of collecting rents from the tenants and to pay the interest to the Bank.

(d) After the demise of Mr.Sriraman, the plaintiffs and the defendants 1 and 2 had entered into an oral agreement. As per the oral agreement, the plaintiffs and the defendants 1 and 2, along with their families, can utilise the schedule property for the purpose of residence until any objection made by any one of the legal heirs of the late Mr.Sriraman. If any one of the legal heirs of late Mr.Sriraman may call upon the rest of the legal heirs to partition the Suit property at any time. The legal heirs of late Mr.Sriraman, cannot rent out the property. The interest on the loan payable every month will be paid out of the surplus rent and remaining shall be equally shared by the legal heirs.

(e) In pursuance of the said oral arrangement, the plaintiffs and the defendants 1 and 2 continued residing in the scheduled property. While so, on 01.02.2019, the plaintiffs received notice from the third defendant Bank



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in respect of the outstanding dues payable by the plaintiffs and the defendants 1 and 2 to the tune of Rs.2,16,735/- (Two Lakhs Sixteen Thousand Seven Hundred and Thirty Five Only). The plaintiffs were under the impression that the defendants 1 and 2 will be taking care of the loan dues by collecting the rents from the tenants. However, they failed to do so and they misappropriated the funds received from the tenants. The plaintiffs paid the interest to the Bank to the tune of Rs.80,000/- (Rupees Eighty Thousand Only) by pledging the jewels of the second plaintiff in order to save the property.

(f) The first defendant constructed a wall in front of the common restroom restraining the residents, including the tenants, from using the restroom, which has created a nuisance to the plaintiffs and the tenants. The defendants 1 and 2 also restrained the plaintiffs from receiving the rent from the tenants to pay interest to the third defendant. In order to safeguard the value of the property from being seized by the third defendant Bank, they decided to partition the property and to settle the loan by way of selling the property.



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(g) Again the plaintiffs received another notice from the third defendant Bank on 15.05.2019, to pay the overdue amount of Rs.8118.20/- (Rupees Eight Thousand One Hundred and Eighteen and Paise Twenty), and the balance of the outstanding amount is Rs.1,90,401/- (Rupees One Lakh Ninety Thousand Four Hundred and One Only). The first defendant created a problem whenever the tenants approached the plaintiffs to pay the rent. There is a due of loan amount to the third defendant. Due to the reason, they are unable to collect the rent from the tenants.

(h) The plaintiffs each are entitled to 1/5 share in the suit schedule property. In spite of repeated demands and the request made by the plaintiffs, the defendants 1 and 2 are evading the partition over the Suit property. Therefore, the plaintiffs filed this Suit.

3. During the pendency of the Suit, the third plaintiff, namely Mr.S.Palani, died. The fourth and fifth plaintiffs are the legal heirs of the deceased third plaintiff.



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4. The brief averments of the written statement filed by the defendants 1 and 2 are as follows:

(a) The relationship between the parties is admitted. The plaintiffs suppressed the fact that during the lifetime of Mr.Sriraram, he provided with sufficient cash for plaintiffs 2 and 3 to run a business and also the father of the defendants 1 and 2/the late Mr.Sriraman settled the money and jewels for the plaintiffs.

(b) During the lifetime of Mr.Sriraman/the father of the defendants 1 and 2 wanted to settle the property in favour of the defendants 1 and 2. As directed by the father of the defendants 1 and 2/late Mr.Sriraman, the defendants 1 and 2 were permitted to collect the rents from the tenants and to maintain the entire property by themselves and the same was also agreed upon by the plaintiffs 1 to 3. Therefore, the plaintiffs lost their right over the Suit property.



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(c) Further, the plaintiffs orally agreed not to disturb the possession and enjoyment of the defendants 1 and 2 over the Suit property. The defendants 1 and 2 were permitted to enjoy the Suit property as per the family arrangement. Therefore, the defendants 1 and 2 alone are entitled to the Suit property. The defendants 1 and 2 are the absolute owners of the property.

(d) The plaintiffs signed the Mortgage Deed to avail the loan by mortgaging the Suit property, as they recognised the right of the defendants 1 and 2 over the Suit property and repaid the loan. The defendants 1 and 2 have maintained a cordial relationship with the plaintiffs and did not get any documents executed in their favour. The plaintiffs have not raised any objection when the first defendant made an additional construction and carried out repairs in the Suit property. The second defendant by spending huge money, constructed a new floor in the Suit property.

(e) The defendants 1 and 2 alone availed the loan and repaid the loan and the plaintiffs never paid a single payment for the loan amount. The



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plaintiffs are not living in the Suit property. The plaintiffs, having recognised the right of the defendants 1 and 2 over the Suit property even during the lifetime of their father, cannot claim any right over the Suit property.

(f) The defendants 1 and 2 alone inducted the tenants in the Suit property. Only because the Tenancy Agreement contains the signatures of the plaintiffs 2 and 3, they cannot claim any right over the Suit property. The defendants 1 and 2 are maintaining and taking care of the Suit property. The property being already settled as per the family arrangement, the plaintiffs have no right to maintain the Suit and the plaintiffs are permissive occupiers. They were recently permitted to occupy the Suit property out of love and affection. After occupying a portion of the Suit property as permitted by the defendants 1 and 2, the plaintiffs filed the Suit by suppressing the entire facts. There is no cause of action for the Suit and the alleged cause of action is false. Therefore, the Suit is liable to be dismissed.



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5. Based on the above-said pleadings, upon perusing the documents and hearing both sides, this Court framed the following issues:

(i) Whether the plaintiffs are entitled to partition as claimed in the Suit?

(ii) Is it true that there was some family arrangements in the family allotting the property to the defendants 1 and 2 ?

(iii) Whether the plaintiffs have lost their right over the Suit property?

(iv) To what other relief, the parties are entitled?

6. In order to prove the case of the plaintiffs, they examined P.W.1 and marked Exs.P1 to P15. On the side of the defendants, they examined D.W.1 and no documents were marked.

7(a) Mr.M.Divayanathan, the learned counsel appearing for the plaintiffs, would submit that originally the Suit property belonged to one Mrs.Jayalakshmi Ammal W/o. Mr.Arumuga Chettiar and Mr.Sriraman S/o. Mr.Arumuga Chettiar and they got the property through a Court auction



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sale, dated 31.01.1958 and the sale certificate was issued on 17.02.1958 in O.S.No.1222 of 1955 on the file of the City Civil Court, Madras.

(b) The said Mrs.Jayalakshmi Ammal, died intestate, leaving behind her only son, namely Mr.Sriraman, to succeed her estate on 07.04.1987. Therefore, the said Mr.Sriraman alone is entitled to the Suit property. The said Mr.Sriraman, is none other than the father of the plaintiffs 1 to 3 and defendants 1 and 2.

(c) During the pendency of the Suit, the third plaintiff died and his legal heirs were impleaded as the plaintiffs 4 and 5. The said Mr.Sriraman, died intestate leaving behind the plaintiffs 1 to 3 and the defendants 1 and 2 as his legal heirs to succeed his estate. The plaintiffs 1 and 2 and the defendants 1 and 2 are each entitled to 1/5 share. The plaintiffs 4 and 5 are jointly entitled to 1/5 share of the Suit property.

(d) When the plaintiffs demanded partition, the defendants 1 and 2 were not amenable for an amicable partition. The Suit property was

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mortgaged with the third defendant Bank and the third defendant Bank issued notice for the outstanding payments thereby, the plaintiffs demanded partition to settle the dues to the Bank, but the defendants 1 and 2 are not amenable for an amicable partition. Therefore, the plaintiffs filed this Suit.

(e) In order to prove the case of the plaintiffs, they examined P.W.1 and marked Exs.P1 to P15. The defendants 1 and 2 also not denied their relationship and the property purchased by Mr.Sriraman, and the property derived from Mr.Sriraman, father of the plaintiffs 1 to 3 and the defendants 1 and 2. Therefore, the plaintiffs filed this Suit and proved the case of the plaintiffs through oral and documentary evidence and prayed that the Suit is liable to be decreed.

8. Mr.V.Ramamurthy, the learned counsel for the defendants 1 and 2 would submit that there is no dispute in respect of the relationship between the parties and as per the oral arrangement, the property was allotted to the first and the second defendants and they only mortgaged the property to the third defendant Bank and they already settled the amount to the Bank. The



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plaintiffs have no any right, title or interest over the Suit property.

Therefore, the plaintiffs are not entitled to any share over the Suit property and prayed for dismissal of the Suit.

9. This Court heard both sides and perused the records.

10. Issue Nos.1 to 3.

(i) Whether the plaintiffs are entitled to partition as claimed in the Suit?

(ii) Is it true that there was some family arrangements in the family allotting the property to the defendants 1 and 2?

(iii) Whether the plaintiffs have lost their right over the Suit property?

11. For effective disposal and for better appreciation, the issues were re-casted as follows:

(i) Whether the plaintiffs are entitled to partition as claimed in the Suit?

(ii) Whether there were some family arrangements in the family allotting the property to the defendants 1 and 2? if



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so whether the plaintiffs have lost their rights over the Suit property?

(iii) Whether the plaintiffs are entitled to the relief of permanent injunction as against the defendants 1 and 2 from creating encumbrance over the Suit property?

(iv) Whether the plaintiffs are entitled to relief of mandatory injunction as against the defendants 1 and 2 to cooperate for the discharge of loans with the third defendant Bank?

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

Though this Court re-casted the issues at the stage of the Judgment, already the parties were aware about the pleadings and evidences were also adduced and no requirement of adducing further evidence, thereby, this Court is inclined to pass Judgment with the available evidences and materials.

12. Issue Nos.1 and 2.

(i) Whether the plaintiffs are entitled to partition as claimed in the Suit?

(ii) Whether there were some family arrangements in the family allotting the property to the defendants 1 and 2? if



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so whether the plaintiffs have lost their rights over the Suit property?

(a) In this case, the plaintiffs have filed the Suit for partition and to grant permanent injunction as against the defendants 1 and 2 from creating any encumbrance over the Suit property and also to grant a mandatory injunction directing the defendants 1 and 2 to cooperate for the discharge of loans with the third defendant Bank.

(b) According to the plaintiffs, originally the Suit property belonged to one Mrs.Jayalakshmi Ammal and Mr.Sriraman, by way of Court auction purchase. Thereafter, Mrs.Jayalakshmi Ammal died on 07.04.1987 and the said Mr.Sriraman, is none other than the only son of Mrs.Jayalakshmi Ammal. Therefore, the said Mr.Sriraman alone is entitled to the entire property. The plaintiffs 1 to 3 and the defendants 1 and 2 are the legal heirs of the deceased Mr.Sriraman. The said Mr.Sriraman, died intestate on 11.06.2003, leaving behind the plaintiffs 1 to 3 and defendants 1 and 2 as his legal heirs to succeed his estate. Therefore, the plaintiffs 1 to 3 and the



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defendants 1 and 2 each are entitled to the Suit property. When the plaintiffs demanded for the partition, the defendants 1 and 2 refused for an amicable partition. Hence, they filed this Suit.

(c) The contention of the defendants 1 and 2 is that they admitted the relationship between the parties and the purchase of the property by Mrs.Jayalakshmi Ammal and the said Mr.Sriraman. After the demise of Mrs.Jayalashmi Ammal, Mr.Sriraman alone is entitled to the Suit property. However, according to the defendants 1 and 2, there was an oral arrangement between the parties in respect of the enjoyment of the property. As per the oral arrangement, the plaintiffs permitted the defendants 1 and 2 to enjoy the property and they relinquished their right and therefore, the plaintiffs have no right over the Suit property.

(d) Even according to the defendants 1 and 2, there were no any documents produced to prove the relinquishment by the plaintiffs. Therefore, the defendants 1 and 2 have to prove the alleged relinquishment by the plaintiffs when they admitted the relationship between the parties.



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(e) In order to prove the case of the plaintiffs, they examined P.W.1 and marked fifteen documents as Exs.P1 to P15. On the side of the defendants, they examined D.W.1 and no documents were marked.

(f) Though one of the defendants was examined as D.W.1 and he deposed about the family arrangement, the mere oral evidence in respect of the family arrangement is not sufficient to relinquish the share of the plaintiffs. That is only an oral arrangement for convenient enjoyment of the properties and that is not sufficient to prove the alleged relinquishment. Further, there are no any documents produced by the defendants 1 and 2 for the alleged relinquishment made by the plaintiffs. Therefore, the defendants 1 and 2 failed to prove that there was some family arrangement in the family allotting the property to the defendants 1 and 2, thereby the plaintiffs 1 to 3 had relinquished their rights.

(g) Moreover, it is an admitted fact that the property was mortgaged with the third defendant Bank and in the Mortgage Deed, all the plaintiffs



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and the defendants 1 and 2 had jointly executed the Mortgage Deed and the Rental Agreement also entered by the plaintiffs and the defendants 1 and 2.

Therefore, it is clear that the property was not allotted to the defendants 1 and 2 through oral family arrangement.

(h) In the absence of any proof of the above-said oral arrangement by allotting the property to the defendants 1 and 2, it cannot be said that the plaintiffs have lost their right over the property. Since there is no dispute in respect of the relationship between the parties and both parties admitted that the plaintiffs 1 to 3 and the defendants 1 and 2 are the sons and daughter of the deceased Mr.Sriraman and the said Mr.Sriraman died intestate on 11.06.2003, leaving the plaintiffs 1 to 3 and the defendants 1 and 2 as his legal heirs, all the plaintiffs 1 to 3 and defendants 1 and 2 are equally entitled to the property of the late Mr.Sriraman.

(i) During the pendency of the Suit, third plaintiff died. The fourth and fifth plaintiffs are arrayed as parties and therefore, the plaintiffs 1 and 2 and the defendants 1 and 2 are each entitled to 1/5 share over the Suit



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property. The plaintiffs 4 and 5 are jointly entitled to 1/5 share over the Suit property, in total the plaintiffs are jointly entitled to 3/5 share over the Suit property. Therefore, the plaintiffs are entitled to partition as indicated above.

13. Issue No.3.

(iii) Whether the plaintiffs are entitled to the relief of permanent injunction as against the defendants 1 and 2 from creating encumbrance over the suit property?

The plaintiffs sought for the relief of permanent injunction as against the defendants 1 and 2 from creating encumbrance over the Suit property. This Court in the previous issues decided that the plaintiffs are jointly entitled to 3/5 share over the suit property, thereby the defendants 1 and 2 cannot create any encumbrance to the share of the plaintiffs. Therefore, the plaintiffs are entitled to the relief of permanent injunction as against the defendants 1 and 2 from creating encumbrance over the 3/5 share of the plaintiffs over the Suit property.



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14. Issue No.4

(iv) Whether the plaintiffs are entitled to relief of mandatory injunction as against the defendants 1 and 2 to cooperate for the discharge of loans with the third defendant Bank?

The plaintiffs sought for the relief of mandatory injunction directing the defendants 1 and 2 to cooperate for discharging the loan to the third defendant Bank. According to the plaintiffs, they borrowed money from the third defendant Bank by mortgaging the Suit property. The third defendant Bank has not contested the Suit. According to the defendants 1 and 2, they have already settled the dues to the Bank. However, there is no evidence as to whether the discharge receipt was executed by the third defendant Bank in respect of the mortgage loan. Therefore, after the settlement of the mortgage loan, the defendants 1 and 2 and the plaintiffs can get the discharge receipt from the third defendant Bank. If any one of the parties approaches the third defendant Bank for discharge receipt, then the third defendant Bank has to execute the discharge receipt.



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15. Issue No.5

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

This Court in the previous Issue Nos.1 to 4 decided that the plaintiffs are jointly entitled for partition of 3/5 share over the Suit property and thereby, they are entitled for the preliminary decree.

16. In the result:

(i) This Suit is decreed, and all the plaintiffs are jointly entitled to 3/5 share over the Suit property and the Suit property is ordered to be divided into five equal parts and allot three parts to the plaintiffs. To that effect, the preliminary decree is passed. The plaintiffs are entitled to a final decree as per the law.

(ii) The defendants 1 and 2 are restrained by an order of permanent injunction from creating encumbrance over the 3/5 shares of the plaintiffs over the Suit property.

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(iii) The parties are directed to co-operate for the discharge receipt of the mortgage in respect of the property mortgaged with the third defendant Bank as indicated above. Considering the relationship between the parties and the nature of the Suit, there shall be no order as to costs.

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Index : Yes / No

Neutral Citation: Yes/No

Speaking Order/Non Speaking Order



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P.DHANABAL,J.

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