



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.04.2024

PRONOUNCED ON : 04.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 103 of 2022

1. N.Bibi Hajira
 2. N.Halima Ummal
 3. Zulaikha
 4. N.Ommou Habiba
 5. N.Zubaidha
 6. O.Badrunisa
 7. M.Abdul Hameed
 8. M.Shameera Hassan
- ... Plaintiffs

Vs.

N.Mohamed Ismail

...Defendant

Prayer : Petition filed under Order VII Rules 1 & 2 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree to

a) partition the suit properties by metes and bounds and allot and deliver separate possession of 58/504 share each to the plaintiffs 1 to 5 and 98/504 share altogether to plaintiffs 6 to 8 in all totaling 388/504 share to the plaintiffs.



b) to direct the defendant to pay past and future mesne profit in respect of the suit properties.

For plaintiffs : Mr. I.Kowser Nissar

For Defendant : set exparte

ORDER

The suit had been filed seeking a Judgment and Decree to partition the suit properties by metes and bounds and allot and deliver separate possession of 58/504 share each to the plaintiffs 1 to 5 and 98/504 share altogether to plaintiffs 6 to 8 in all totaling 388/504 share to the plaintiffs and for a direction against the defendant to pay past and future mesne profit with respect to the suit properties.

2. The first, second, third, fourth and fifth plaintiffs are all sisters and daughters of Haji M.A.Naina Mohamed, who resided at Karaikal. The sixth plaintiff is the widow of a predeceased son of Haji M.A.Naina Mohamed and the seventh and eighth plaintiffs are her son and daughter. The defendant N.Mohamed Ismail is another son of late Haji M.A.Naina Mohamed.



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3. It had been stated that Haji M.A.Naina Mohamed died on 04.01.1997 leaving behind his widow and two sons and five daughters. His younger son N.Mohammed Hassan died on 04.01.2002 leaving behind as his legal representatives, his widow and a son and daughter, who are the sixth, seventh and eighth plaintiffs herein. The wife of Haji M.A.Naina Mohamed, Ayesha Ummal died on 04.06.2018. It is thus claimed that the plaintiffs and the defendant are the only surviving legal heirs of late Haji M.A.Naina Mohamed.

4. It had been further stated in the plaint that late Haji M.A.Naina Mohamed died intestate leaving behind properties at No. 63, Aangappa Naicken Street, Chennai and No.15 Mannadi Street, Chennai and at No.1 Noolkadai Street, Karaikal, Puduchery and No.12, Noolkadai Street, Karaikal, Puduchery and agricultural lands total measuring 11 Mah 88 Kuzhi at Sorakudy, Serumavilangai Village in Karaikal, Puduchery District.



5. On the death of Haji M.A.Naina Mohamed, the properties devolved in the ratio of 35/72 to the five daughters, 14/72 to each one of the two sons and 9/72 to his widow.

6. Subsequently, his widow, Ayesha Ummal, also died on 04.06.2018. She was possessed of lands measuring 47 ares at Varichikudi South Village Kottucherry Commune Panchayat, Karaikal, Puducherry and further lands in the same village measuring 48 ares and a house at No.12, Nool Kadai Street, Karaikal, and also three properties at Serumavilangai Village measuring respectively 17 ares and 15 centiares, 19 ares and 71 centiares in 97 ¼ kuzhis.

7. The properties of late Haji M.A.Naina Mohamed had been more specifically described in Schedule-A to the plaint and the properties of late Ayesha Ummal had been more specifically described in Schedule B to the plaint.



8. It is stated in the plaint that on the death of late Ayesha Ummal, the first to fifth plaintiffs / her daughters inherited 5/27 shares in her properties and the defendant inherited 2/7 shares in her estate.

9. It was thus claimed that the plaintiff Nos. 1 to 5 are entitled to 58/504 shares each and the plaintiff No. 6 to 8 were entitled to 98/504 shares and the defendant was entitled to the balance shares in the 'A' and 'B' schedule properties.

10. It had been stated in the plaint that the defendant was in occupation of the properties at Chennai and was enjoying the monthly rents. It is stated that the plaintiffs issued a notice on 27.03.2020 calling upon the defendant to partition the properties in an amicable manner. The defendant replied on 22.07.2020 claiming right over the entire properties. The plaintiffs then issued a rejoinder dated 03.10.2020. It had been stated that the defendant did not share the rental income received by him from the properties at Chennai. It had thus been stated that the plaintiffs are entitled for a Judgment and Decree for partition and separate possession of 58/504 shares each to the first to fifth plaintiffs and that the sixth to eighth plaintiffs are jointly entitled



to 98/504 shares. Claiming as above, since there has been refusal to divide the properties by the defendant, the plaintiffs have filed the present suit.

11. Though the defendant was initially represented by a counsel, subsequently written statement was not filed and therefore, the defendant was set ex-parte by order dated 24.01.2024. The matter was then posted before the Additional Master No.II for recording of evidence.

12. The first plaintiff Mrs.N.Bibi Hajira was examined as PW-1 and she marked Exs. P-1 to P-7. Ex.P-1 is a copy of the sale deed dated 14.11.1963, Ex.P-2 is a copy of the sale deed dated 08.07.1963, Ex.P-3 is a copy of the sale deed dated 18.08.1969, Ex.P-4, 5, 6 and 7 are the copies of the notices exchanged between the parties.

13. The issues which will have to be examined

(i) Whether the plaintiffs 1 to 5 were entitled for an undivided 58/504 shares in the suit schedule properties each,



(ii) Whether the plaintiffs 6 to 8 are entitled to 98/504 share in the properties,

(iii) whether the plaintiffs are entitled for mesne profits, and

(iv) to what other reliefs the parties are entitled to?

14. Heard arguments advanced by Mr. I.Kowser Nissar, learned counsel for the plaintiffs.

15. The learned counsel pointed out that the plaintiffs and the defendant are the sole surviving legal heirs of their parents late Haji M.A.Naina Mohamed and Ayesha Ummal, who died on 04.01.1997 and 04.06.2018 respectively. The first to fifth plaintiffs are the daughters and the defendant is one son and another son had pre-deceased his mother and his legal heirs are the sixth to eighth plaintiffs. The learned counsel pointed out that the fact that the properties are owned by the parents cannot be either denied or disputed. He also pointed out that the plaintiffs had marked Exs.P-1 to P-3 which are the copies of the sale deeds dated 14.11.1963, 08.07.1963,



18.08.1969. The learned counsel further stated that notice had been issued prior to the institution of the suit and reply and rejoinder notices had also been issued. He pointed out that the defendant had taken a decision to remain exparte. The learned counsel further stated that the defacto complainant was in possession of the properties at Chennai and is enjoying the monthly rent. He staed that the plaintiffs have therefore sought mesne profits also. He argued that the suit should be decreed.

16. I have carefully considered the arguments advanced and perused the records available.

Issue Nos. 1 to 3:

17. All the three issues could be taken up together for consideration. The facts are not in dispute. The 'A' schedule propertie originally stood in hte name of Haji M.A.Naina Mohamed. He died on 04.01.1997. He left behind his widow Ayesha Ummal and five daughters and two sons. His younger son died on 04.01.2002. Ayesha Ummal died on 04.06.2018. The legal heirs of the younger son are the sixth to eighth plaintiffs. The daughters are the first



to fifth plaintiffs. The elder son is the defendant. On the death of Haji M.A.Naina Mohamed, the daughters and the two sons and his widow were entitled to his proeprties in the ratio of 35/72 (for the daughters totally), 14/72 (for each of the two sons) and 9/72 (for the widow Ayesha Ummal). Later on the death of Ayesha Ummal, the properties which stood in her name devolved in the ratio of 5/7 (first to fifth plaintiffs) and 2/7 (defendant).

18. In view of the further shares devolving on to the parties, the ratio of the shares of the plaintiffs would be 290/504 and that of the sixth to eighth plaintiffs would be 98/504 and that of the defendant would be 116/504.

19. It is clear that the defendant had avoided granting any share of the properties or any share in the rental income received by him. Thus, it is evident that a Judgment and Decree for partition of the properties will necessarily have to be issued. Further, the defendant is also enjoying the monthly rents particularly from the properties at Chennai. The plaintiffs are also entitled to a share of the same.



20. In view of all these reasons, the issue No. 1 is answered that the first to fifth plaintiffs are together entitled to 290/504 shares in the 'A' and 'B' schedule proeptries and issue No.2 is answered that the fifth to eighth plaintiffs are entitled to 98/504 shares and issue No.3 is answered that the plaintiffs are entitled for a decree of mesne profits.

21. In view of all the circumstances, the suit is decreed but without cots, in view of the relationship among the parties, and

(i) a preliminary decree is passed that each of the the plaintiffs are entitled for 58/504 share in 'A' and 'B' schedule properties each to the first to fifth plaintiffs and for 98/504 shares for the sixth to eighth plaintiffs in the 'A' and 'B' schedule properties, and

(ii) the plaintiffs are also entitled for past and future mesne profits.

(iii) The plaintiffs are at liberty to file an application for final decree in manner known to law.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking Order



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1. List of Witnesses Examined on the side of the Plaintiffs:-
 1. P.W.1 – Mrs. N.Bibi Hajira
2. List of Exhibits Marked on the side of the Plaintiff:-
 1. Ex.P1 is the photocopy of sale deed dated 14.11.1963
(Compared with original and returned as per direction);
 2. Ex.P2 is the photocopy of the sale deed dated 08.07.1963.
(Compared with original and returned as per direction);
 3. Ex.P3 is the photocopy of the sale deed dated 18.08.1969.
(Compared with original and returned as per direction);
 4. Ex.P4 is the office copy of the legal notice and AD card
dated 27.03.2020;
 5. Ex.P5 is the original reply notice dated 22.07.2020;
 6. Ex.P6 is the office copy of the rejoinder dated 03.10.2020;
and
 7. Ex.P7 is the original reply by the defendant to the rejoinder
dated 23.10.2020.

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C.V.KARTHIKEYAN, J.
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Pre-Delivery Judgment made

in

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