



C.R.P.(MD).No.2315 of 2016
&
A.S.(MD).No.163 of 2016

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	28.03.2024
Pronounced On	:	12.07.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.2315 of 2016
and
A.S.(MD).No.163 of 2016
and
C.M.P.(MD).No.10664 of 2016

C.R.P.(MD).No.2315 of 2016

K.Ramkumar

... Petitioner

Vs.

1.Marimuthu

2.Karuppayee

3.Minor Damodharan

4.Minor Sarumathy

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of the Constitution of India to set aside the order and decretal order dated 09.12.2015 in I.A.No.124 of 2014 in O.S.No.45 of 2013, on the file of the I Additional District Judge, Tuticorin.



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For Petitioner : Mr.R.Devaraj

For Respondents : Mr.V.Meenakshi Sundaram

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K.Ramkumar

... appellant

Vs.

1.Marimuthu

2.Karuppayee

3.Minor Damodharan

4.Minor Sarumathy

5.Rajammal

6.Chandrasekaran ... Respondents
(*Minor respondents 3 and 4 are represented through their guardian and the second respondent*)

PRAYER: First Appeal has been filed under Section 96 of C.P.C to set aside the judgment and decretal order dated 09.12.2015 in O.S.No.45 of 2013, on the file of the I Additional District Judge, Tuticorin.

For Petitioner : Mr.R.Devaraj

For Respondents : Mr.V.Meenakshi Sundaram



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COMMON ORDER

The plaintiff in O.S.No.45 of 2013, on the file of the First Additional District Judge, Tuticorin and the respondent in I.A.No.124 of 2014 in O.S.No.45 of 2013 on the file of the First Additional District Judge, Tuticorin has filed this Appeal Suit in A.S.(MD).No.163 of 2016 and Civil Revision Petition in C.R.P. (MD).No.2315 of 2016 before this Court, challenging the dismissal of the partition Suit filed in O.S.No.45 of 2013 and allowing the claim of the respondents under Section 4 of the Partition Act, 1893.

2. For the sake of convenience, the rank of the parties stated in O.S.No.45 of 2013 is herein referred. The appellant is the plaintiff is O.S.No.45 of 2013 and he filed the suit for partition demanding partition of 1/3 share as against the respondents herein. The respondents herein are the defendants in the suit have filed I.A.No.124 of 2014 under Section 4 of the Partition Act, 1893, praying the learned trial judge to issue a direction to the petitioner/plaintiff to execute the sale deed upon receipt of the sale consideration of Rs.7,55,000/- mentioned in the sale deed purchased for the undivided 1/3 share of the first defendant's brother.



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3. Brief fact of the plaintiff case before the Court below:

One Sornam was the owner of the suit schedule property. She had executed a registered Will dated 10.10.1978 bequeathing the said property to her three minor grand-sons born through her only son. The three minor grand-sons are Marimuthu, Shenbagaraj, Chandrasekaran. She died on 18.03.1993. After her death, on attaining majority, the three grand-sons had become the absolute owners and had been jointly enjoying the said property. One of the grand-son, namely, Chandrasekar/6th defendant (in the suit), after his majority sold his undivided 1/3 share to the appellant herein on 18.03.2013, upon receipt of the valuable consideration, namely, Rs.7,55,000/- Thereafter, on knowing the same, the respondents herein issued legal notice dated 09.04.2013, to the appellant herein and his vendor and the same was suitably replied by the appellant and the sixth respondent. A police complaint also was made, to the Deputy Superintendent of Police against the appellant. Therefore, the suit in O.S.No.45 of 2013 has been filed to pass a preliminary decree against the defendants/respondent Nos.1 to 5 to divide the suit schedule property by metes and bounds and allot 1/3 share with costs.



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4. The brief facts of the case of the defendant Nos.1 to 5

The defendant Nos.1 to 5, have not filed the written statement. But, they have filed I.A.No.124 of 2014 in the said suit under Section 4 of the Partition Act, 1893, with the following averments:

4.1.They admitted the relationship and execution of the registered “Will” dated 10.10.1978 and the death of Sornam on 18.03.1993. The 6th defendant who had sold the property to the appellant was a drunkard and using the said situation, the appellant had purchased the undivided share. They admitted 1/3 share of the plaintiff. The suit schedule property is undivided dwelling house and hence, allowing the 3rd parties into the undivided dwelling house affected their privacy. Therefore, they filed the application under Section 4 of the Partition Act, 1893 to issue a direction to the appellant to execute the sale deed upon receipt of the sale consideration of Rs.7,55,000/-.

4.2.The said application was contested by the appellant by filing counter and the material portion of the counter is as follows:

4.3.He denied the averment that the sixth defendant was a drunkard and also denied the allegation that he obtained the sale deed by using the said situation. He specifically pleaded that the suit schedule property contains 6 individual houses. Among the six individual houses, three houses are in their



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occupation and three houses are in the occupation of the tenant. Therefore, the allegation they would deprive their privacy is not correct. Section 4 of the Partition Act, is only applicable to the undivided family. Here, the 6th respondent and the defendants are living separately for many years and hence, it is not an undivided family. Even his vendor was living separately and all the beneficiaries after their marriage are living separately. Among the six houses, two houses for the share of the plaintiff would have been allotted to him and no prejudice was caused to the privacy of the defendants 1 to 5. They intended to sell the property for a higher price by obtaining the sale deed of the 1/3 share purchased by him, without any *bonafide* intention to live in the said suit schedule properties. He also raised a specific plea that Section 6 is not applicable to this case and on account of the fact that 6th respondent, namely, appellant's vendor never lived with the respondents and hence, he seeks for dismissal of the petition.

5. Finding of the learned trial Judge in I.A.No.124 of 2014

The learned trial Judge allowed the application with the following findings:

5.1. In the suit schedule property, 8 houses are there and the same was not amenable to separate enjoyment on the partition. In the notice issued by the



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defendant Nos.1 to 5, it is stated that there are four old houses and one newly constructed house totally eight houses. Therefore, there is no possibility to enjoy the property without division. If any share is allotted with separate possession, the same would cause hindrance to the privacy of the defendant Nos.1 to 5. Even though the sixth defendant, namely, the vendor of the appellant was not living with the remaining defendants as a joint family, the nature of the property can not be amicably divided and the same is a dwelling house and hence, the respondent's claim is to be allowed. Taking into consideration of the fact the respondent agreed to pay the amount of the sale consideration, the learned trial Judge has inclined to allow the application and also considering the fact that the plaintiff was not enjoying the property from the date of purchase has granted 6% of interest. In result, the learned trial Judge directed the defendants 1 to 5 to pay a sum of Rs.7,55,000/- with 6% interest from the date of the purchase and upon receipt of the same, the appellant was directed to execute the sale deed relating to the 1/3 share, by impugned order dated 09.12.2015 and consequently, dismissed the suit in O.S.No.45 of 2013 holding that the above I.A., was allowed. Challenging the same, the above Appeal Suit and the Civil Revision Petition have been filed.



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6.Submission of the learned counsel for the appellant/petitioner:

The learned counsel for the petitioner/appellant submitted that the suit properties originally belonged to one Sornam. She was the absolute owner of the suit schedule property. In the suit schedule property, are there a row of houses. The the suit schedule property has been inherited by way of registered Will dated 10.05.1978. As per the Will the vendor of the plaintiff is entitled to 1/3 share and the defendants are entitled to 2/3 share. On the basis of purchasing the properties of the undivided share, the plaintiff has filed a suit for partition and separate possession. During the pendency of the suit, the respondents filed the written statement admitting the relationship and also the execution of the “Will” and the entitlement of 1/3 share to the vendor of the plaintiff. Pending the same, they raised the plea that they are entitled for the preemptive right under Section 4 of the partition Act, 1893. Hence, they filed I.A.No.124 of 2014 seeking permission to deposit the sale consideration of Rs.7,55,000/- mentioned in the sale deed obtained by the plaintiff. The said application was allowed. While allowing the application any the procedure stated in Section 4 of the Partition Act,1893 has not been followed. Apart from that, none of the parameters were taken into account by the learned trial Judge in allowing the application. Hence, he seeks for setting aside the I.A.No.124 of 2014. The learned trial Judge further



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committed error in dismissing the suit without any discussion on merits. He dismissed the suit passing one line order and the same is not in consonance with the provisions of C.P.C.

7.Submissions of the learned counsel for the defendant nos.1 to 5/respondents

The learned counsel for the respondents submitted that once they purchased the properties of the undivided share, their right is to file the suit for partition. The defendants are entitled to have preemptive right hence, they rightly filed the application. In the said circumstances, the learned trial Judge correctly allowed the application and dismissed the suit, on the ground that no further adjudication is necessary. He further submitted that the learned trial Judge Correctly determined the value of the property and awarded 6% of interest. He admitted that the decree in O.S.No.,45 of 2013 was not drafted in accordance with the law but the operative portion is in accordance with Section 4 and 8 of the Partition Act, 1893 and hence,the preliminary decree may be modified inconsonance with the said operative portion of I.A.No.124 of 2014 and hence, he seeks to modify the decree in O.S.No.45 of 2013. He also filed the detailed written submission and he relied the following judgments:



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AIR 1984 DELHI 168, 1996 (11) SCC 446, 2000 (3) MLJ 94 (SC), 2002 (4) L.W.551, AIR 1953 CAL 259, AIR 1953 ALL 332, AIR 1968 CAL 245 and AIR 1969 CAL 88.

8. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record and also the precedents relied upon by them.

9. The following points arise for determination in the A.S.(MD)No.163 of 2016 and in C.R.P.(MD).No.2315 of 2016:

(i) Whether the judgment and decree passed in O.S.No.45 of 2013 is in accordance with law?

(ii) Whether the Court below right in entertaining the defendants 1 to 5's prayer in I.A.No.124 of 2014?

(iii) Whether the Court below is correct in directing the appellant to receive the sale consideration with interest?

(iv) Whether the order in I.A.No.124 of 2014 is in compliance with Section 4 of the Partition Act, 1893?



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Discussion on Question Nos.1 to 4:

10. Discussion on various provision of partition act : Before going into the discussion on merits, it is relevant to extract the principle laid down by the Hon'ble Supreme Court and various Courts, while interpreting various provision of partition act including Section 4 of the Partition Act, 1893.

10.1. Section 2 and 4 of the Partition Act, 1893 is as follows:

Section 2	Section 4
2. Power to Court to order sale instead of division in partition suits <i>.Whenever in any suit for partition in which, if instituted prior to the commencement of this Act, a decree for partition might have been made, <u>“it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the shareholders therein, or of any other special circumstance, a division of the property cannot reasonably or conveniently be made, and that a sale of the property and distribution of the proceeds</u> would be more beneficial for all the shareholders, the Court may, if it thinks fit, on the request of any of such shareholders interested individually or collectively to the extent of one moiety or upwards, direct a sale of the property and a distribution of the proceeds.</i>	4. Partition suit by transferee of share in dwelling-house <i>(1)Where a share of a dwelling-house belonging to an undivided family has been transferred to a person who is not a member of such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.</i> <i>(2)If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.</i>

10.2. A conjoint reading of both Sections, would show that the stranger who had purchased the undivided share of “a dwelling-house”, has a right to file the partition suit.



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10.3. On the basis of the report of the Commissioner, a division of the property cannot reasonably or conveniently be made and the division would cause detriment to the value of the property and the sale of the said property should be more beneficial for all the share holders and the Court on the request of any of the shareholder interested individually or collectively can direct a sale of property.

10.4. In the suit, the stranger's purchase was not disputed and his entitlement of the share was admitted through pleading and when the application under Section 4 of the Partition Act, 1893, had been made by the co-sharer with an undertaking to buy extent of the share of the stranger, then the Court shall pass preliminary decree declaring the entitlement of the stranger share and decree the suit and shall initiate *suo motu* the final decree proceeding as per the law laid down by the Hon'ble Supreme Court in the case of **Gautam Paul v. Debi Rani Paul** reported in (2000) 8 SCC 330 and fix the hearing date in continuation of the proceedings. In the partition, the defendant also the plaintiff. Therefore, both parties shall directed to file their pleadings in *suo Motu* final decree application and appoint the Commissioner to divide the properties by metes and bound. If any of the shareholder applies for leave to buy at a valuation



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of the share, the Court shall order a valuation of the share, in such manner as it may think fit and offer to sell the same to such shareholder at the price so ascertained and consequently, give all necessary direction in that behalf. If two or more shareholders apply for leave to buy the same, the Court shall order a sale to the shareholder who offers to pay the highest price above the valuation made by the Court. The Court shall follow the procedure to conduct the sale as per Section 6 and 7 of the Partition Act, 1893. The said order for sale is deemed to be a decree within the meaning of Section 2 of C.P.C., as per Section 8 of the Partition Act, 1893.

11.The Hon'ble Supreme Court in the case of ***Ghantesher Ghosh v. Madan Mohan Ghosh*** reported in 1996 (11) SCC 446 paragraph No.4 made a detailed condition to invoke Section 4 of the Partition Act, 1893, which reads as follows:

4. It is in the background of these rival contentions that we address ourselves to the consideration of this question. Before we refer to the cleavage of judicial opinion amongst different High Courts on the scope and ambit of Section 4 of the Act, it would be profitable to have a look at the provision itself. The Statement of



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Objects and Reasons for enacting the Partition Act, 1893 amongst others, provided as under:

“It is also proposed in the Bill to give the Court the power of compelling a stranger who has acquired by purchase a share in a family dwelling house when he seeks for a partition, to sell his share to the members of the family who are the owners of the rest of the house at a valuation to be determined by the Court. This provision is only an extension of the privilege given to such shareholders by Section 44, paragraph 2 of the Transfer of Property Act, and is an application of a well-known rule which obtains among Muhammadans everywhere and by customs also among Hindus in some parts of the country.”

It is obvious that the Act intended to extend the privilege already available to a co-sharer in a family dwelling house as per Section 44 of the Transfer of Property Act, 1882 (hereinafter referred to as “the T.P. Act”). Section 44 of the T.P. Act dealing with cases of transfer by one of the co-owners of immovable property, reads as under:

“44. Transfer by one co-owner.—Where one of two or more co-owners of immovable property legally competent in that behalf transfers his share of such property or any interest therein, the transferee acquires, as to such share or interest, and so far as is necessary to give effect to the transfer, the transferor's right to joint possession or other common or part enjoyment of the property, and to enforce a partition of the same, but subject to



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the conditions and liabilities affecting, at the date of the transfer, the share or interest so transferred.

Where the transferee of a share of a dwelling house belonging to an undivided family is not a member of the family, nothing in this section shall be deemed to entitle him of joint possession or other common or part enjoyment of the house.”

It is obvious that by the time the Act came to be enacted, the legislature had in view the aforesaid parent provision engrafted in Section 44 of the T.P. Act to the effect that a stranger to the family who becomes the transferee of an undivided share of one of the co-owners in a dwelling house belonging to undivided family could not claim a right of joint possession or common or part enjoyment of the house with other co-owners of the dwelling house. Implicit in the provision was the legislative intent that such stranger should be kept away from the common dwelling house occupied by other co-sharers. It was enacted with the avowed object of ensuring peaceful enjoyment of the common dwelling house by the remaining co-owners being members of the same family sharing a common hearth and a home. It is in the light of the aforesaid pre-existing statutory background encompassing the subject that we have to see what Section 4 of the Act purports to do. Section 4 of the Act provides as under:

“4. Partition suit by transferee of share in dwelling house.—(1) Where a share of a dwelling house belonging to an undivided family has been transferred to a person who is not a member of



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such family and such transferee sues for partition, the Court shall, if any member of the family being a shareholder shall undertake to buy the share of such transferee, make a valuation of such share in such manner as it thinks fit and direct the sale of such share to such shareholder, and may give all necessary and proper directions in that behalf.

(2) If in any case described in sub-section (1) two or more members of the family being such shareholders severally undertake to buy such share, the Court shall follow the procedure prescribed by sub-section (2) of the last foregoing section.”

A mere look at the aforesaid provision shows that for its applicability at any stage of the proceedings between the contesting parties, the following conditions must be satisfied:

- (1) A co-owner having undivided share in the family dwelling house should effect transfer of his undivided interest therein;*
- (2) The transferee of such undivided interest of the co-owner should be an outsider or stranger to the family;*
- (3) Such transferee must sue for partition and separate possession of the undivided share transferred to him by the co-owner concerned;*
- (4) As against such a claim of the stranger transferee, any member of the family having undivided share in the dwelling house should put forward his claim of pre-emption by undertaking to buy out the share of such transferee; and*



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(5) *While accepting such a claim for pre-emption by the existing co-owner of the dwelling house belonging to the undivided family, the court should make a valuation of the transferred share belonging to the stranger transferee and make the claimant co-owner pay the value of the share of the transferee so as to enable the claimant co-owner to purchase by way of pre-emption the said transferred share of the stranger transferee in the dwelling house belonging to the undivided family so that the stranger transferee can have no more claim left for partition and separate possession of his share in the dwelling house and accordingly can be effectively denied entry in any part of such family dwelling house.*

11.1.a. The Hon'ble Supreme Court 2000 8 SCC 330 has held as follows:

Gautam Paul v. Debi Rani Paul, (2000) 8 SCC 330 at page 341

23. We are in agreement with this opinion. There is no law which provides that co-sharer must only sell his/her share to another co-sharer. Thus strangers/outsideers can purchase shares even in a dwelling house. Section 44 of the Transfer of Property Act provides that the transferee of a share of a dwelling house, if he/she is not a member of that family, gets no right to joint possession or common enjoyment of the house. Section 44 adequately protects the family members



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against intrusion by an outsider into the dwelling house. The only manner in which an outsider can get possession is to sue for possession and claim separation of his share. In that case Section 4 of the Partition Act comes into play. Except for Section 4 of the Partition Act there is no other law which provides a right to a co-sharer to purchase the share sold to an outsider. Thus before the right of pre-emption, under Section 4, is exercised the conditions laid down therein have to be complied with. As seen above, one of the conditions is that the outsider must sue for partition. Section 4 does not provide the co-sharer a right to pre-empt where the stranger/outsider does nothing after purchasing the share. In other words, Section 4 is not giving a right to a co-sharer to pre-empt and purchase the share sold to an outsider anytime he/she wants. Thus even though a liberal interpretation may be given, the interpretation cannot be one which gives a right which the legislatures clearly did not intend to confer. The legislature was aware that in a suit for partition the stranger/outsider, who has purchased a share, would have to be made a party. The legislature was aware that in a suit for partition the parties are interchangeable. The legislature was aware that a partition suit would result in a decree for partition and in most cases a division by metes and bounds. The legislature was aware that on an actual division, like all other co-sharers, the stranger/outsider would also get



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possession of his share. Yet the legislature did not provide that the right for pre-emption could be exercised “in any suit for partition”. The legislature only provided for such right when the “transferee sues for partition”. The intention of the legislature is clear. There had to be initiation of proceedings or the making of a claim to partition by the stranger/outsider. This could be by way of initiating a proceeding for partition or even claiming partition in execution. However, a mere assertion of a claim to a share without demanding separation and possession (by the outsider) is not enough to give to the other co-sharers a right of pre-emption. There is a difference between a mere assertion that he has a share and a claiming for possession of that share. So long as the stranger-purchaser does not seek actual division and possession, either in the suit or in execution proceedings, it cannot be said that he has sued for partition. The interpretation given by Calcutta, Patna, Nagpur and Orissa High Courts would result in nullifying the express provisions of Section 4, which only gives a right when the transferee sues for partition. If that interpretation were to be accepted then in all cases, where there has been a sale of a share to an outsider, a co-sharer could simply file a suit for partition and then claim a right to purchase over that share. Thus even though the outsider may have, at no stage, asked for partition and for the delivery of the share to him, he would be forced to sell his



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share. It would give to a co-sharer a right to pre-empt and purchase whenever he/she so desired by the simple expedient of filing a suit for partition. This was not the intent or purpose of Section 4. Thus the view taken by Calcutta, Patna, Nagpur and Orissa High Courts, in the aforementioned cases, cannot be said to be good law.

11.2.1. Apart from above judgements, this court also considered various judgments reported in AIR 1987 SC 66, 2008 (7) MLJ 772, AIR 1978 SC 845, AIR 1991 SC 700, AIR 1973 SC 643, 1988 Sup SC 507, AIR 1997 SC 471 and AIR 2003 SC 53. From the reading of above precedents, it is clear that in a suit for partition either initiated by the stranger or if he has been arrayed as a defendant, Section 4 application at the instance of the shareholder is maintainable.

11.2.2. The applications filed under Section 4 shall contain clear undertaking to buy the share of such transferee.

11.2.3. The Court shall make the valuation of the transferee share belonging to the stranger transferee.

11.2.4. For arrival of the said valuation of the share of the property, the Court has to determine the value of the property as on the date of the application



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by the co-sharer to buy the share alienated by another sharer and not the date of the purchase of the share. The value is market value and not actual price paid by the transferee to the transferor shareholder. The valuation is to be fixed on proper market value, which is to be fair to both stranger purchaser and also to the applicant.

11.2.5.The Court below should exercise what it “*appears*” that it is not so capable of division.

12.Discussion on the issue of dismissal of partition suit:

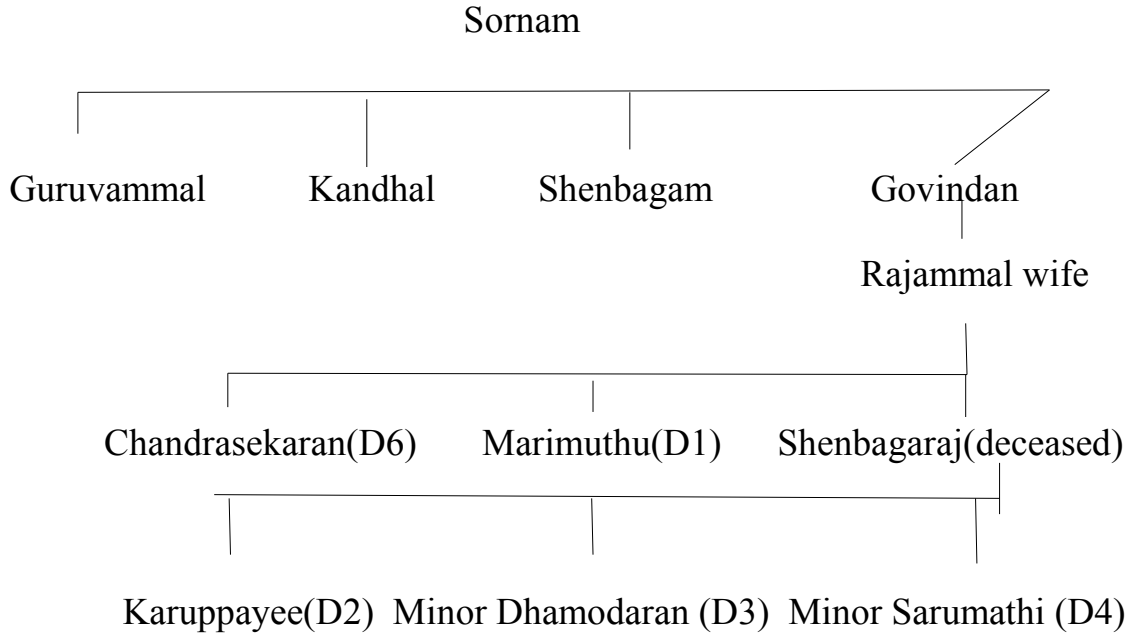
With these above guidelines, this Court delves upon the factual and legal discussion of this case. For better appreciation of the fact, it is relevant to consider the genealogy:



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12.1.Sornam was the absolute owner of the suit schedule property. She executed the registered will dated 10.10.1978, in favour of D6, D1 and the deceased Shenbagaraj, who was the husband of the D2 and the father of the D3 and D4. She died on 18.03.1993. thereafter, D6, D12 and the deceased Shenbagaraj became the joint owners of the suit schedule property. D6 Chandrasekaran has sold his undivided 1/3 share in the suit schedule property vide registered sale deed dated 18.03.2013 in favour of the plaintiff, upon receiving consideration of Rs.7,55,000/-. The first defendant sent a legal notice on 09.04.2013 to the plaintiff apart from lodging a police complaint. He alleged



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that D6 was a drunkard and the plaintiff has obtained the sale deed when he was under the influence of alcohol. The plaintiff sent a reply and filed a suit in O.S.No.45 of 2013 on the file of the I Additional District and Sessions Judge, Tuticorin, to pass the preliminary decree directing the defendant Nos.1 to 5 to partition the suit schedule property in metes and bounds and allot 1/3 share to him.

12.2.The defendant Nos.1 to 5 entered appearance and the 6th defendant was set exparte. The defendant Nos.1 to 5 filed the application under Section 4 of the Partition Act, 1893 to issue a direction to the plaintiff to execute the sale deed upon receipt of the sale consideration of Rs.7,55,000/-. The said application was allowed and the suit was dismissed. The learned trial Judge framed the following issues and dismissed the suit in O.S.No.45 of 2013, with the following finding:

1.தபசில் சொத்துக்களை நலஇளப்பம் சரிகட்டி வாதிக்குரிய 1/3 பாகத்தை 1 முதல் 5 பிரதிவாதிகள் பிரித்துக் கொடுக்கும்படிக்கு முதல்நிலை தீர்ப்பாணை பிறப்பிக்கக் கோரியும் மற்றும் இவ்வழக்கின் செலவு தொகையை 1 முதல் 5 பிரதிவாதிகள் வாதிக்கு கொடுக்கம்படிக்கு உத்தரவிடக் கோரியும் வாதியால் இவ்வழக்கு கட்டளை 7 விதி 1



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சி.பி.சி.யின்படி தாக்கல் செய்யப்பட்டுள்ளது.

2.இவ்வழக்கில் கீழ்க்கண்ட எழுவினாக்கள்
வனையப்பட்டன.

1. வாதிக்கு வழக்கிடைச் சொத்துக்களில் பாக உரிமை
உண்டா? உண்டெனில் அவர் பெறத்தக்க பாகம் என்ன?
2. வாதி கோரியுள்ளபடி முதல்நிலை தீர்ப்பாணை
பெறத்தக்கவரா?
3. வாதி பெறத்தக்க வேறு நிவாரணங்கள் என்ன?

3.வ.இ.ம.எண்.124/2014 அனுமதிக்கப்பட்டுள்ளதால் இந்த
வழக்கு தள்ளுபடி செய்யப்படுகிறது செலவுத் தொகை இல்லை.

It is admitted case, that the property belonged to one Sornam. The said Sornam executed the Will in favour of the first defendant and the sixth defendant and one Shenbagaraj. The said Shenbagaraj executed the sale deed in favour of the petitioner. He purchased the property from the sixth defendant, namely, Chandrasekaran.

13.From the perusal of the above judgment, it is seen that it is not a judgment at all. The C.P.C., contemplates that judgment must contain reasons for their conclusion and also judgments must contain the conclusion of the issue. The judgment also must satisfy the requirements under Section 2(9), 33 of the



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CPC and Order 20 Rule 4 and 5 of the C.P.C. It is also well settled that the operative portion of the judgment is culminated into form of decree and the same was emphasized by this Court in the case of **Balaraman Vs. Jegadammal** and others reported in **2015 (4) CTC 617**:

25.As per Order 20, Rule 4 of Civil Procedure Code, Judgments of the Courts shall contain a concise statement of the case, the points for determination, the decision thereon, and the reasons for such decision.

13.1.The Hon'ble Division Bench of this Court in the case of **Meenakshisundaram Textiles v. Valliammal Textiles Ltd** reported in **2011 (3) CTC 168** also elaborated this in Paragraph No.6, which is as follows:

6. In terms of the above provisions, every judgment should contain a concise statement of the case, the points for determination, decision thereon and the reasons for such decision. A judgment which does not contain the bare minimum facts, the point for determination, the evidence adduced and the application of those facts and evidence for deciding the issue would not qualify it to be called as “judgment”. The judgment should contain the brief summary of the facts, the evidence produced by the Plaintiff in support of his claim and the reasoning of the



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learned Judge either for decreeing the Suit or its dismissal. The Civil Procedure Code does not say that the Court is bound to grant a decree in case the Defendant is absent. Judgment means cognitive process of reading a decision or drawing conclusion. Judgment is the basic requirement for a Court and it means a decision or conclusion reached after consideration and deliberation. To put it differently, the basics of a judgment are to support by most cogent reasons that suggest themselves the final conclusion at which the Judge has conscientiously arrived.

13.2. By applying the above principle this Court finds that the Court below committed error in dismissing the suit filed by the plaintiff without any adjudication and finding on the framed issues therefore, this Court inclines to hold that the trial Court committed error in dismissing the suit .

13.3. Discussion on entitlement of preliminary decree for partition on the basis of the admission :-

13.4. In this case the contesting defendant Nos.1 to 5, in I.A.No.124 of 2014 have not disputed the plaintiff's entitlement of 1/3 share and made a



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specific admission that they are entitled to 1/3 share on the basis of the sale deed executed by the sixth defendant. There is no dispute that 6th defendant is entitled to 1/3 share as per the “Will” dated 10.10.1978 executed by his grand-mother. The Court has power to pass a decree on the basis of the undisputed admission made in the pleadings under Order 12 Rule 6 of the C.P.C., and the same was fortified by the judgment of the Hon'ble Supreme Court reported in the case of ***Uttam Singh Duggal & Co. Ltd. v. United Bank of India***, reported in (2000) 7 SCC 120

12. As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that “where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled”. We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear



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admission of facts in the face of which it is impossible for the party making such admission to succeed.

Therefore, this Court is inclined to hold that the appellant is entitled to get the decree of 1/3 share in the suit schedule property as prayed for on the basis of the admission made in I.A.No.124 of 2014 and no dispute was raised before this Court relating to the said entitlement.

14. Discussion on the legality of the decision in I.A. 124 of 2014 :-

14.1. Remaining questions which have to be addressed in this case is that the order of the learned trial Judge in allowing the application filed by the defendant Nos.1 to 5 in I.A.No.124 of 2014 is correct or not? To decide the same, this Court extracts the prayer of the petition in I.A.No.124 of 2014:

எனவே மதிப்பிற்குரிய இந்நீதிமன்றம் தயை கூர்ந்து எதிர்மனுதாரரை அவர் தபசில் சொத்தின் 1/3 பாகத்தை கிரையம் வாங்க கொடுத்த Rs.7,55,000/- மனுதாரர்களிடமிருந்து பெற்றுக்கொண்டு மனுதாரர்கள் பெயர்களுக்கு இதனடி தபசில் சொத்தில் அவருக்குரிய 1/3 பாகத்தைப் பொறுத்து ஒரு கிரையப்பத்திரம் பிற்பித்துக் கொடுத்திட உத்திரவிடும்படி மனுதாரர்கள் பணிவுடன் வேண்டுகிறார்கள்.



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15.1. In the considered opinion of this Court, the said prayer itself is not maintainable and the same is not in accordance with the true purport of Section 4 of the Partition Act, 1893. As per Section 4 of the Partition Act, 1893, the defendant shall undertake to buy the share of the transferee. The Court alone shall make a valuation of such share. In the said circumstances, the application is against the law.

15.2. The appellant specifically filed the counter stating that suit schedule property contains six individual houses. Three houses are in the occupation of the tenants. Three houses are in their separate occupation. The defendants do not come under the category of “undivided family”. They are not living jointly. In view of the separate individual houses and already three tenants are in the premises of two houses in the share of the plaintiff would not cause any hinderance and disturbance to the defendant Nos.1 to 5. The defendant Nos.1 to 5 with malafide intention to sell *the entire properties* for higher value to the third parties filed this application. The above counter allegation made by the appellant would require adjudication of the issue whether the property is divisible or not and the application of Section 4 of the Partition Act, 1893 when the family is not undivided family and when all are living separately. But, the learned trial Judge



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allowed the application even after holding that the defendants are not living jointly. The Trial Judge allowed the suit only on the ground that the suit schedule property is dwelling house and the defendants 1 to 5 are ready to pay the sale consideration mentioned in the sale deed and in the considered opinion of this Court the said order is erroneous one.

15.3 The learned trial Judge in Paragraph No.9, first four lines, found that the 8 houses are situated in the suit schedule property and the same was not amenable for separate enjoyment, ie., அந்த வீடுகள் அனைத்தும் தனிதனி புழக்கத்துடன் பிரிவினை செய்யப் கூடிய அளவிற்கு அமைப்புடன் அமைந்திருப்பதாக தெரியவில்லை. In the said circumstances, as per the following Order 20 of Rule 18(2) of C.P.C., the learned trial Judge ought to have passed the final decree and appointed the Advocate Commissioner and to submit the report to ascertain the indivisibility of number of houses situated in the suit schedule property. Without ascertaining the same, he simply issued a erroneous direction to receive the sale consideration with interest:

Order XXX.18.Decree in suit for partition of property or separate possession of a chare therein:

Where the Court passes a decree for the partition



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of property or for the separate possession of a share therein then,

*(2) if and in so far as such decree relates to any other immovable property or to movable property, the Court may, if the partition or **separation cannot be conveniently made without further inquiry**, pass a preliminary decree declaring the rights of the several parties interested in the property and giving such further directions as may be required.*

15.4. In the order, the learned trial Judge also observed that there are number of separate houses(8houses)and there was no evidence to show that they are not divisible one. In this aspect also the learned trial Judge committed error. Therefore, this Court is inclined to set aside the order passed in I.A.No.124 of 2014.

15.5. Discussion on the deposit of amount made by the respondent :-

15.5.1. Coming to the Consideration of the argument of the respondent counsel that the trial Court directed to pay the amount with interest and the same was deposited before the Court and hence, the decree in O.S.No.45 of 2013 may be modified in consonance with the order passed in I.A.No.124 of 2014 cannot be accepted on the ground that this Court already held that the prayer in I.A.No.



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124 of 2014 itself is not in accordance with Section 4 of the Partition Act, 1893 and the order of the Court below without determining the value market value is erroneous one. But, this Court need to clarify that as per Section 4 of the Partition Act, 1893, the value of the property is to be determined on the date of the submission of the application of undertaking to buy the property. In this case, even though the defendants 1 to 5 made the application to purchase the property for the value mentioned in the sale deed and expressed their intention to buy the property and hence, this Court inclines to issue a direction to the Court below to determine the value of the property as on date of the making the application ie., on 02.01.2014. Before entering such exercise, it is the duty of the Court to consider the question of nature of property and division of the property cannot reasonably or conveniently be made for enjoyment by taking into the pleadings of the appellant herein. Therefore, this Court set aside the fair and decreetal order passed in I.A.No.124 of 2014 in O.S.No.45 of 2013 on the file of the I Additional District Judge, Tuticorin.

16. Conclusion :-

In considering the overall circumstances and pendency of litigation for long period and to meet out equity and in the interest of justice and also applying



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the direction of the Hon'ble Supreme Court in the following cases, this Court allow the appeal and decree the suit in O.S.No.45 of 2013 with the various directions as stated below.

Shub Karan Bubna v. Sita Saran Bubna, reported in (2009) 9 SCC 689 at page 700

Conclusion

31. when a preliminary decree is passed in a partition suit, the proceedings should be continued by fixing dates for further proceedings till a final decree is passed. It is the duty and function of the court. Performance of such function does not require a reminder or nudge from the litigant. The mindset should be to expedite the process of dispute resolution.

In the case of ***Kattukandi Edathil Krishnan and Another Vs. Kattukandi Edathil Valsan and Others*** reported in ***2022 SCC Online SC 737***

33. We are of the view that once a preliminary decree is passed by the Trial Court, the court should proceed with the case for drawing up the final decree suo motu. After passing of the preliminary decree, the Trial Court has to list the matter for taking steps under Order XX Rule 18 of the CPC. The courts should not adjourn the matter sine die, as has been done in the instant case. There is also no need to file a separate final decree proceedings.



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In the same suit, the court should allow the concerned party to file an appropriate application for drawing up the final decree. Needless to state that the suit comes to an end only when a final decree is drawn. Therefore, we direct the Trial Courts to list the matter for taking steps under Order XX Rule 18 of the CPC soon after passing of the preliminary decree for partition and separate possession of the property, suo motu and without requiring initiation of any separate proceedings.

34. We direct the Registry of this Court to forward a copy of this judgment to the Registrar Generals of all the High Courts who in turn are directed to circulate the directions contained in paragraph '33' of this judgment to the concerned Trial Courts in their respective States.

17.Hence, the questions No.1 to 4 are answered in favour of the petitioner/appellant.

17.1.

Paragraph	Finding
3 and 4	Brief facts of the plaintiff's case before the Court below
4 to 4.3	The brief facts of the case of the defendant Nos.1 to 5



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5 and 5.1	Finding of the learned trial Judge in I.A.No.124 of 2014
6 and 7	Submission of the learned counsel for the appellant/petitioner
7 to 9(iv)	Submissions of the learned counsel for the defendant nos.1 to 5/respondents
10 to 11.2.5	Discussion on Question Nos.1 to 4
12 to 13.2.	Discussion on the issue of dismissal of partition suit
13.3 and 13.4	Discussion on entitlement of preliminary decree for partition on the basis of the admission
14 to 15.4	Discussion on the legality of the decision in I.A. 124 of 2014
15.5 and 15.5.1.	Discussion on the deposit of amount made by the respondent
16	Conclusion

18. Accordingly, the appeal suit in A.S.(MD).No.163 of 2016 is allowed.

18.1 The judgment and decree passed by the learned trial Judge in O.S.No. 45 of 2013 on the file of the I Additional District Court, Tuticorin, is hereby set aside.

18.2. The suit in O.S.No.45 of 2013 is decreed in the following terms:

18.2.1. the plaintiff is entitled to 1/3 share in the suit schedule property.

18.2.2. the trial Court shall appoint Advocate Commissioner to divide the property in metes and bounds and submit a report.



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18.2.3. If the Commissioner arrived a conclusion that property can not conveniently be divided and such division may materially impair the value of the property, the trial Court shall make the valuation of the share of the plaintiff on date of the making the application ie., on 02.01.2014. and direct the sale of the share of the plaintiff to the defendants 1 to 5.

18.2.4.If the defendants 1 to 5 failed to obtain the sale, the plaintiff is at liberty to purchase the shares of the defendants 1 to 5, at the rate of the determined value of the shares of the defendants 1 to 5. There shall be no order as to costs.

19.Accordingly, the Civil Revision Petition stands allowed in the following terms:

(i)the fair and decreetal order passed in I.A.No.124 of 2014 in O.S.No.45 of 2013, dated 09.12.2015, by the I Additional District Judge, Tuticorin, is hereby set aside. There shall be no order as to costs.

12.07.2024

NCC :Yes/No
Index :Yes/No
Internet :Yes/No
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To:

The I Additional District Judge,
Tuticorin.



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K.K.RAMAKRISHNAN, J.

sbn

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