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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-10-2015

(Judgment Reserved on 30-09-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.48 of 2014

Mr.B.Raju

.. Plaintiff

Vs.

1. R.Anandan
2. R.Ravichandran
3. Mrs.Gandhimathi
4. Gnanavelu
5. Sundaravadivelu

.. Defendants

Plaint filed and numbered as Civil Suit under Order 7 Rule 1 of the Code of Civil Procedure, read with Order 4 Rule 1 of the Madras High Court Original Side Rules, praying for judgment and decree against the defendants:

(a) to declare that the plaintiff is the owner of the suit schedule mentioned property morefully described in the schedule mentioned property;

(b) to grant permanent injunction restraining the defendants from alienating or in any manner encumbering the plaint schedule property, and

(c) to direct the defendants to pay the costs of the suit.

Schedule of property

All that piece and parcel of land, building, superstructure, consisting ground floor and first floor,



S.No.T.S.No.148, Gangaianman Koil Street, Lakshmipuram,
Chennai-600 041, measuring an extent of 111 Mtrs. or 1195

Sq.Ft., bounded on the:

North by: Plot No.23
South by: Gangaianman Koil Street
East by: Plot No.24
West by: Plot Nos.26 and 27

measuring on

North, East Western side : 10.1 m
South, East Western side: 9.7m
East, North Southern side : 11.0m
West, North Southern side: 11.4m

For plaintiff : Mr.N.Srinivasulu

For defendants: Defendants set ex-parte on 16.12.2014

JUDGMENT

The Civil Suit is filed by the plaintiff to declare that the plaintiff is the owner of the suit schedule mentioned property, to grant permanent injunction restraining the defendants from alienating or in any manner encumbering the plaint schedule property, and to direct the defendants to pay the costs of the suit.

2. It is the case of the plaintiff that the defendants 1, 2, 4 and 5 are his sons and the third defendant is his daughter. The plaintiff worked in Chennai Port Trust for 33 years as General Mechanic, High Skilled (HS) and brought up the defendants and conducted their marriages. The plaintiff purchased the suit schedule property in the name of his wife, in 1975, out of the funds raised by him. Later, the



suit property was taken over by the Tamil Nadu Slum Clearance Board (for short, "the TNSCB"), which was subsequently allotted to the plaintiff's wife by the TNSCB on 25.06.1984. The second defendant gave ill-advice to the plaintiff's deceased wife and there was quarrel between the plaintiff and his deceased wife, leaving to family dispute between them. Hence, the plaintiff filed suit in O.S.No.4662 of 2008 before the City Civil Court, Chennai, for permanent injunction restraining the defendants from disposing of the suit property by sale, mortgage and by alienation or in any other manner. The said suit was decreed in favour of the plaintiff, against which, the plaintiff's wife and the second defendant herein preferred appeal in A.S.No.238 of 2010 before the City Civil Court, Chennai, which was dismissed on 14.11.2011. During the course of the Court proceedings, the plaintiff's wife obtained sale deed in her favour on 16.06.2008 and she filed a petition for divorce against the plaintiff in O.P.No.3697 of 2008 and she died on 09.02.2013, resulting in abatement of divorce petition. After the death of his wife, the plaintiff became the absolute owner of the suit property. The defendants started troubling the plaintiff for disposal of the suit property and to get money out of the same. The second defendant took all original title deeds and tax books, which were in the custody of the plaintiff's wife and if the defendants are allowed to



dispose of the suit property, then the plaintiff will be put to irreparable loss and damage and ultimately, he will be thrown to Street. Hence, the plaintiff has filed the suit for the relief stated supra.

3. The defendants were set ex-parte by this Court on 16.12.2014.

4. During the course of trial, the plaintiff examined himself as P.W.1 and marked Exs.P-1 to P-9. The Court bailiff was examined as C.W.1 and Exs.C-1 to C-4 were marked on his side.

5. P.W.1 (plaintiff) admitted that the suit property was purchased in the name of his deceased wife. Subsequently, the suit property was allotted in favour of his wife by the TNSCB, which is evident from Ex.P-1 allotment order of the TNSCB, dated 25.06.1984. The certified copy of the sale deed executed by the TNSCB in favour of the plaintiff's wife, is marked as Ex.P-3, dated 16.06.2008. It is also to be noted that the certified copy of the sale deed pertaining to the suit property which was originally purchased in the name of the plaintiff's wife, is marked as Ex.P-8, dated 24.01.1975. The Death Certificate of the plaintiff's wife is marked as Ex.P-6, dated 26.02.2013, showing the date of her death as



09.02.2013.

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6. Though it is admitted that the suit property stands in the name of the wife of the plaintiff, that the allotment order of the TNSCB is also in her name, that the sale deed was also executed in her name, the plaintiff has to prove that the suit property was purchased out of his own funds in the name of his wife. Except his own evidence in P.W.1, the plaintiff did not produce any oral or documentary evidence to show that the suit property was purchased out of his own funds. The allotment order of the TNSCB in Ex.P-1 and the sale deed in Ex.P-8 are in favour of the plaintiff's wife. The certified copies of the judgments of the Courts below in O.S.No.4662 of 2008 and A.S.No.238 of 2010, show that the suit was filed before the Court below only for bare injunction and not for declaration of his ownership to the suit property. The suit was decreed by the Court below, which was confirmed in the appeal.

7. Further, during the course of divorce proceedings, the plaintiff's wife died, and hence, the divorce proceedings got abated. Moreover, the defendants are the legal heirs of the plaintiff and his deceased wife, i.e. they are their sons and daughter. Since the plaintiff is the co-owner along with the defendants, he is not entitled



for injunction against the other co-owners, who are his own sons and daughter.

8. There is no evidence produced by the plaintiff before this Court to show that the suit property was purchased in his wife's name out of his own money.

9. Admittedly, the plaintiff's deceased wife did not execute any document regarding the suit property during her life time. Hence, the plaintiff is only entitled to undivided 1/6 share in the suit property. Hence, this Court is of the considered view that the plaintiff is not entitled for declaration and permanent injunction sought for in this suit. He is entitled to only 1/6 share in the undivided share in the suit property.

10. In the result, it is declared that the plaintiff is entitled to only 1/6 share in the undivided share in the suit property. In other respects, the suit is dismissed. No costs.



Witnesses examined on the side of plaintiff:-- P.W.1
Mr.B.Raju (plaintiff)

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List of documents marked on the side of plaintiff:--

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-1	25.06.1984	Certified copy of allotment order of the TNSCB in respect of the suit property in favour of the plaintiff's wife Rajeswari
P-2	-	Certified copy of the Pension Book of the plaintiff
P-3	16.06.2008	Certified copy of the sale deed registered in Doc.No.4167 of 2008 by TNSCB in favour of the plaintiff's wife
P-4	23.12.2009	Certified true copy of the judgment in O.S.No.4662 of 2008 on the file of the 11th Assistant Judge, City Civil Court, Chennai
P-5	14.11.2011	Certified true copy of the judgment in A.S.No.238 of 2010 on the file of the 7th Additional Judge, City Civil Court, Chennai.
P-6	26.02.2013	Computer generated Death Certificate copy of plaintiff's wife R.Rajeswari showing her date of death as 09.02.2013
P-7	02.01.2014	Original Valuation Report in respect of the suit property, issued by Chartered Engineer and Approved Valuer
P-8	24.01.1975	Certified copy of the sale deed pertaining to the suit property in the name of the plaintiff's wife Rajeswari executed by one Natarajan in Document No.125 of 1975
P-9	02.07.2008	Office copy of the plaint in O.S.No.4662 of 2008 filed by the plaintiff before the City Civil Court.



Witnesses examined on the side of defendants:-- Nil

Documents marked on the side of defendants:- Nil

Court witness:C.W.1 Mr.A.Shyamsundar(Junior Bailiff,High Court,Madras)

Court documents :

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
C-1	12.03.2014	Original returned summons addressed to the first defendant
C-2	12.03.2014	Original returned summons addressed to the third defendant
C-3	12.03.2014	Original returned summons addressed to the fourth defendant
C-4	12.03.2014	Original returned summons addressed to the fifth defendant

sd/.G.C.J

30.10.2015

//Certified to be a true copy//

Dated this the day of 2016

R.s/05.02.2016

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.