

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :16.02.2015

CORAM

THE HONOURABLE MRS. JUSTICE **S.VIMALA**

C.S.No.1091 of 2007

Annie Vinifred

... Plaintiff

Vs.

1. Antony Victor Sahaya Raj

2. Vivina Dhanasheeli

3. Valantina Gnanasheeli

... Defendants

PRAYER: Plaintiff under Order VII Rule 1 C.P.C. read with Order IV Rule 1 of O.S.Rules praying for (a) granting preliminary decree for partition dividing the schedule mentioned property into four equal shares and allotting one such share to the plaintiff; (b) directing the 1st defendant to pay the plaintiff the past mesne profits amounting to Rs.63000/- for the preceding three (3) years and future mesne profits at Rs.1750/- being the 1/4th share to the plaintiff; (c) directing the defendant to pay the plaintiff the cost of the suit.

For Plaintiff :M/s.J.Arockia Selvaraj

For Defendants :Ex parte

JUDGMENT

This Civil Suit has been filed by the plaintiff,

seeking the relief of partition.

2. The plaintiff's mother and father died intestate on 09.01.1998 and 11.05.1998 respectively, leaving behind the plaintiff and the defendants as legal representatives. The defendants are stated to be the brother and sisters of the plaintiff.

2.1. The case of the plaintiff is that the suit property was purchased by the father of the plaintiff under the sale deed dated 24.08.1981, which was marked as Ex.P1. The plaintiff has issued notice to the defendants calling upon them to divide the property by metes and bounds under Ex.P2. The defendants did not choose to give any reply. Therefore, the plaintiff was forced to file the suit seeking 1/4th share in the entire extent of the suit property.

3. The parties are Christians and therefore, their rights are governed under the Indian Succession Act, 1925. As per Section 37 of the Indian Succession Act, 1925, when the intestate die leaving children, all the children are entitled to equal share.

3.1. Section 37 of the Indian Succession Act, 1925 reads as under:

"37. Where intestate has left child or children only - Where the intestate has left surviving him a child or children, but no more remote lineal descendant through a deceased child, the property shall belong to his surviving child, if there is only one, or shall be equally divided among all his surviving children."

4. It is a case of the plaintiff that the suit property originally belonged to her father and that after his death, the plaintiff and the defendants are entitled to equal share in the property and therefore there must be a decree for partition allotting 1/4th share to the plaintiff. The claim of the plaintiff that the property originally belonged to her father is proved through Ex.P1-sale deed. There is no rival contention by the defendants.

4.1. As per Section 37 of the Indian Succession Act, the plaintiff and the defendants are entitled to equal share, the share being 1/4th as there are four legal

representatives, who are entitled to share. The plaintiff has claimed only 1/4th share and she is entitled to the same as per the oral and documentary evidence adduced by her. Therefore, the suit has to be decreed.

5. In the result, the suit is decreed granting preliminary decree for partition of 1/4th share to the plaintiff. No costs.

sd/.S.V.J

16.02.2015

//Certified to be a true copy//

Dated this the day of 2015.

R.s/11.06.2015

COURT OFFICER

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

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