

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.01.2015

CORAM

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

C.S.No.622 of 2009

1. R.Gopalakrishnan
2. R.Rajalakshmi
3. R.Neela
4. S.Guhapriya
5. R.Sankar
6. Lalitha
7. Ratnasabapathy ... Plaintiffs
(Plaintiffs 2 to 7 are represented by
their Power Agent R.Gopalakrishnan)

Vs.

1. B.Visalakshi
2. Tiwari
3. Meenakshi ... Defendants

PRAYER: Plaint filed under Order IV Rule 1 of O.S.Rules read with order VII Rule 1 of C.P.C. praying for the following relief:

(a) directing division of suit property by metes and bounds and declare 1/7th share of each of the plaintiffs

(b) directing the 1st defendant to pay costs.

For Plaintiffs : Mr.B.Ravi

For D2 : Mr.Rohit Krishna

For D3 : Mr.S.N.Ravikumar

JUDGMENT

The plaintiffs are the sons and daughters of one

Radhakrishnan. Radhakrishnan and Krishnamoorthy are the sons of one Gopalasamy. The father of the plaintiffs, namely, Radhakrishnan died on 07.12.1977, leaving behind the plaintiffs as his legal heirs.

2. Krishnamoorthy died on 30.12.2004 and his wife Gokilambal died on 13.04.2009. Krishnamoorthy and Gokilambal had no issues. Krishnamoorthy purchased the suit property in the name of his wife Gokilambal. Gokilambal had no independent means to purchase the property and only from out of the earnings of her husband, the property was purchased benami in the name of Gokilambal.

3. The first defendant is the younger sister of the deceased Gokilambal. The second and third defendants are the tenants of the suit property. The plaintiffs as class-II legal heirs of the deceased Gokilambal are entitled to the property as per Section 15(1)(b) of the Hindu Succession Act and as such, they have filed the suit for partition.

4. The first defendant remained ex parte. The second defendant has entered into a compromise with the plaintiffs, after receiving Rs.7,50,000/- and has vacated the property, having handed over the keys to the

plaintiffs. The joint memo of compromise reads as under:

JOINT MEMO OF COMPROMISE

BETWEEN PLAINTIFF AND 2ND DEFENDANT

"The Plaintiffs' filed the present suit for partition of the suit schedule property being the legal heirs of Krishnamurthy and Kokilambal, their uncle and aunt who died issueless and intestate u/s.15(1) (b) of the Hindu Succession Act.

The plaintiffs sought 1/7th undivided share in the suit schedule property. The 1st plaintiff as a power agent for plaintiffs 2 to 7 is representing the suit on their behalf also.

The 1st defendant, the sister of Kokilambal remained exparte. The 3rd defendant who was a tenant has been set exparte.

The 2nd defendant who was tenant under Mr.Krishnamurthy and Kokilambal since 1984 was also contesting the suit.

The plaintiffs and the 2nd defendant have hereto entered into a compromise on the following terms and conditions:

1. The 2nd defendant (tenant) agrees to submit to decree being granted to the plaintiff as prayed for in

the suit C.S.No.622 of 2009.

2. The 2nd defendant (tenant) has on this day vacated the Ground floor of the suit schedule property which is in his occupation & enjoyment and handed over the keys of the premises to the plaintiffs.

3. In consideration of the 2nd defendant (tenant) consenting to vacate & to handover vacant possession of the rented portion of suit schedule property, the plaintiffs' pay a sum of Rs.7,50,000/- (Rupees Seven Lakhs Fifty Thousand Only) by way of Bankers Cheque Bearing No.017958 dated 16.12.2014 drawn on Karur Vysys Bank T.Nagar Branch favouring Ram Dayal Tiwari the 2nd defendant, who is mentioned as Tiwari in the above suit.

4. The 2nd defendant has paid all the statutory dues, such as Electricity, Water Charges etc. for his period of occupation.

5. The 2nd defendant is at liberty to withdraw the amount of rent deposited in the Court and pay the same to the plaintiffs.

It is prayed this Joint Memo of Compromise may be recorded any may form part and parcel of the preliminary Decree.

5. Under such circumstances, the following two

issues have been framed for consideration:

a) Whether the plaintiffs are entitled for partition and separate possession of their 1/7th share each.

b) Whether the compromise decree has to be passed so far as the second defendant is concerned?

6. The relationship between the parties and the status of the parties and the entitlement of the plaintiffs to share in the property are not under dispute, as the first defendant remains exparte.

6.1. To show that the property belongs to Gokilambal, the sale deed under Ex.P10 in her name has been filed. The parent document of tile under Ex.P9 has been filed. These documents proves the title of deceased Gokilambal.

6.2. The death certificate of Gokilambal has also been filed. After the death of Gokilambal, who will be entitled to property is the issue to be considered. According to the plaintiffs eventhough property stands in the name of Gokilambal, she has no independent means to purchase the property and that the purchase money was given only by her husband and therefore it is not the property owned by Gokilambal, but a property inherited by

Gokilambal from her husband. This is stated so in the evidence of P.W.1

6.3. General rules of Succession in case of female Hindus are given in Section 15 of the Hindu Succession Act. Section 15 reads as under:

**15. General rules of succession
in the case of female Hindus.-**

(1) The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

(a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband.

(b) secondly, upon the heirs of the husband.

(c) thirdly, upon the mother and father.

(d) fourthly, upon the heirs of the father, and

(e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified

therein, but upon the heirs of the father, and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

The scheme of sub Section i of Section 15 shows that the property of Hindu Females dying intestate is to devolve on her own heirs. The list of such heirs has been enumerated in clause a to e of Sub Section 1 . Sub Section 2 provides for exception only with regard to one source of acquisition viz., inheritance and even then the exception is confined to property inherited by her either from her

A. Father or Mother

B. From her Husband or her Father-in-law.

6.4. Only when the female heir do not leave any direct heir the heirs of the husband come into picture. In this case, evidence has been adduced to show that the deceased Gokilambal had no issues and her husband was

also no more. The plaintiffs as legal heir of her husband are entitled to the property since it is a property inherited by her from her husband. Eventhough, document of title stands in her name as though she is the owner, the evidence would go to show that the property belonged to her husband and she might have got it only by inheritance, she having been a house wife having no independent means to purchase the property. Hence, the plaintiffs are entitled to partition and separate possession as claimed in the plaint.

7. Therefore, there shall be a decree for partition and separate possession of 1/7th share to each of the plaintiffs.

7.1. The suit is decreed as against the first and third defendants. There shall be a compromise decree in terms of the compromise memo between the plaintiffs and the second defendant. No costs.

sd/.S.V.J

22.01.2015

//Certified to be a true copy//
Dated this the day of 2015.

R.s/16.02.2015

COURT OFFICER

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