

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-10-2015

(Judgment Reserved on 23-09-2015)

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Civil Suit No.610 of 2010

1. Jameela Begum
2. G.Vajiha Sultana ... Plaintiffs

Vs.

1. L.Salauddin
2. Mohammed Jaffar
3. Ghose Mohammed
4. Yahiya
5. Tajjunissa
6. Badrunissa
7. Madhan
8. Proprietor, Sri Tirupathi Store
9. Proprietor, Vinayagam Stores
10. Proprietor, Kirubeen Engineering Service
11. Armstrong @ Raja ... Defendants

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

(a) to pass a preliminary decree that the plaintiffs are entitled to get 2/5 share in the suit schedule property.

(b) pass a final decree partition of the suit schedule mentioned property by metes and bounds and put the plaintiffs in possession of their 2/5 share

in suit schedule property, in the event that the property is indivisible by metes and bounds, sell the property and allot 2/5 share in the sale proceeds to the plaintiffs 1 and 2 jointly;

(c) direct the first defendant to pay the future mesne profit to the plaintiffs 1 and 2 herein at the rate of Rs.25,200/- per month from the date of filing the suit till the date of partition by metes and bounds and separate possession of the plaintiffs 2/5 share in the suit schedule property, and

(d) to direct the first defendant to pay the costs of the suit.

Schedule of property

All that piece and parcel of land and building situate at No.86, Gowdia Mutt Road, Royapettah, Chennai-14, comprised in Old Survey No.3463, and Re-Survey No.142 in C.C.No.759 measuring an extent of one ground and 1419 Sq.Ft. bounded on the

North by: A lane

South by: House of Pilliar Koil Endowment and Rathinammal

East by: Gowdia Mutt Road (Royapettah Bazaar Road)

West by: R.Mohammed Ismail Sahib's House within the Sub-Registration District of Mylapore and Registration District of Central Chennai.

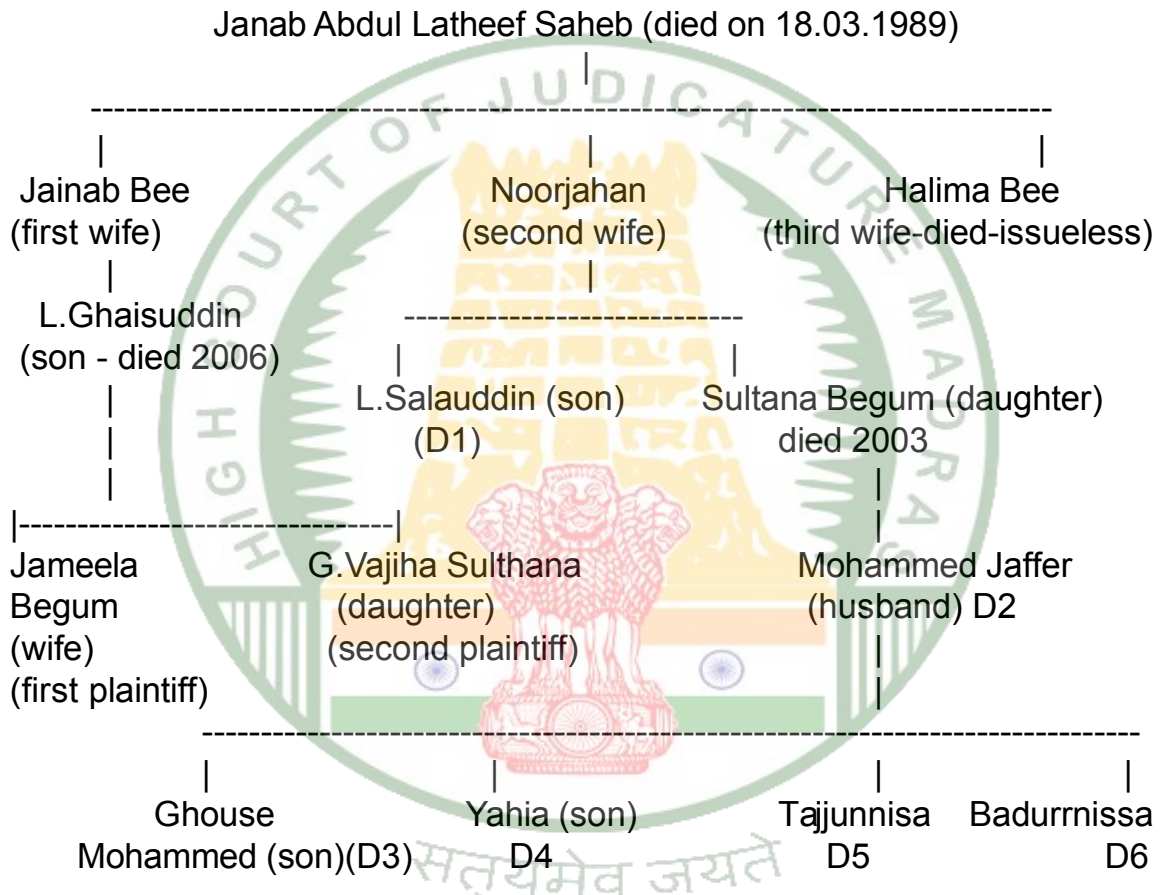
For plaintiff : Mr.P.K.Sabapathy
For defendants : No appearance for Defendants 2 to 6 and 11 Defendants 7 and 9 - served with Court notice Defendants 1, 8 and 10 - Court Notice returned unserved

JUDGMENT

The Civil Suit is filed by the plaintiffs for partition and separate possession of 2/5 share in the suit property and for future mesne profits from the first defendant.

2. The plaintiffs 1 and 2 who are the wife and daughter of late L.Ghaisuddin, who died intestate leaving behind the plaintiffs as only legal heirs. The said late L.Ghaisuddin's father (i.e. Janab Abdul Latheef Saheb) and the brother of the said Janab Abdul Latheef Saheb, purchased the suit property and subsequent to the said purchase, the said brother released his right in the suit property in favour of Janab Abdul Latheef Saheb, by way of release deed. Thus, the father of Late L.Ghaisuddin, namely Janab

Abdul Latheef Saheb became the absolute owner of the suit property. The genealogical table showing the relationship between the parties to the suit, is shown below:--



3. The plaintiffs state that they are entitled to 2/5 share in the suit property, in the capacity as legal heirs of the said L. Ghaisuddin along with the other tenants-in-common, under Mohammed Succession Law and they are in joint possession of the same. The first defendant is collecting

the rent from the tenants, namely defendants 7 to 11. The plaintiffs state that they are entitled to get their due share in the rental collections at the rate of Rs.25,200/-, which are collected by the first defendant every month from the defendants 7 to 11.

4. The plaintiffs state that they do not have any source of income after the demise of the said L.Ghaisuddin. The first defendant, with the tenants, i.e. defendants 7 to 11, are taking steps to alienate the suit property against the interest of the plaintiffs, in which, the defendants 2 to 6 are in the side of the first defendant. Though the plaintiffs issued legal notice, dated 30.03.2010 to the defendants 1 to 11, for partition of the suit property and for payment of rental collections at the rate of Rs.25,200/-. Except the defendants 4 and 11, other defendants received the said notice. Since there was no reply, the plaintiffs have this suit for the relief stated supra.

5. The eleventh defendant filed written statement under Order 8 Rule 11 CPC, contending that the suit property is a mud tiled house, which was first leased out to their grandmother Mrs.Grace George Haynes (deceased) about 50 years ago, and subsequently, the tenancy passed on

to the eleventh defendant's mother and after her death in 2002, the eleventh defendant continues as a tenant in his name. The eleventh defendant had been paying monthly lease rent at Rs.400/- to the first defendant. In O.A.No.810 of 2010 in C.S.No.610 of 2010, after this Court appointed the plaintiffs as the Receivers to collect the rents, the eleventh defendant sent the rental cheques to the plaintiffs from June 2011 onwards, and the eleventh defendant has not defaulted in paying the rent. Since no relief is sought for against this defendant, the suit may be dismissed.

6. The Court notice in respect of defendants 1, 8 and 10 returned unserved and the Court notice in respect of defendants 7 and 9 are served. Though the defendants 2 to 6 and 11 are served with Court notice and represented by their respective counsel, there is no appearance for defendants 2 to 6 and 11.

7. By order dated 03.12.2013, this Court framed the following issues for consideration in this suit:

(a) Whether the plaintiffs are entitled to get preliminary decree to the effect that they are entitled to get 2/5 share in the suit schedule property ?

(b) Whether the plaintiffs are entitled to get final

decree for partition of the suit schedule property by metes and bounds and put in their possession of 2/5 share in the suit schedule property and in the event that the property is indivisible by metes and bounds, sell the property and allot 2/5 share in the sale proceeds to the plaintiffs 1 and 2 jointly ? and

(c) Whether the plaintiffs are entitled to get mesne profits at the rate of Rs.25,200/- per month from the first defendant from the date of plaint till the date of put in possession of their 2/5 share in the suit schedule property ?

8. The first plaintiff examined herself as P.W.1 and Exs.P-1 to P-10 were marked on the side of plaintiffs. The eleventh defendant examined himself as D.W.1. No document was marked on the side of defendants.

9. On a perusal of the entire oral and documentary evidence, it is seen that the plaintiffs have proved their case. Accordingly, they are entitled to the preliminary decree of partition as prayed for in the suit. The issues framed in this suit are answered accordingly.

10. Hence, there shall be a preliminary decree of partition of 2/5 share of the plaintiffs in the suit

property, as prayed for. The interested parties shall approach this Court for passing final decree proceedings at the appropriate time. As ordered by this Court on 13.06.2011 in O.A.No.810 of 2010 in C.S.No.610 of 2010, the defendants 7 to 11, shall continue to pay the future rents, to the first plaintiff, till the final decree of partition is passed. The first defendant shall pay the costs of the suit to the plaintiffs.

Witnesses examined on the side of plaintiffs:--

P.W.1 - first plaintiff - Mrs.Jameela Begum

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

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-1	08.01.1983	Photocopy of the Marriage Invitation Card between L.Ghaisuddin and the first plaintiff
P-2	05.02.2010	Photocopy of the Marriage Certificate issued by Chief Khazi, Government of Tamil Nadu in respect of the marriage of L.Ghaisuddin and the first plaintiff
P-3	07.02.2006	Photocopy of the Death Certificate of L.Ghaisuddin issued by the Corporation of Chennai showing the date of his death as 21.01.2006
P-4	20.02.2006	Photocopy of the Legal Heirship Certificate issued by the Tahsildar, Mylapore-Triplicane Taluk, Chennai, pertaining to the deceased L.Ghaisuddin

<i>Exhibit No.</i>	<i>Date</i>	<i>Description of the exhibit</i>
P-5	26.08.1956	Photocopy of Secondary School Leaving Certificate (SSLC) issued to L.Ghaisuddin by the District Educational Officer, Madras.
P-6	04.09.1998	Photocopy of Voter Identity Card of L.Ghaisuddin, issued by the Electoral Registration Officer, Triplicane Assembly Constituency
P-7	20.03.1973	Certified copy of the Release Deed executed by R.Mohammed Ismail in favour of Abdul Latheef
P-8	30.03.2010	Office copy of the Legal Notice issued on behalf of the plaintiffs to the defendants 1 to 11
P-9 series	-	Acknowledgement Cards of defendants 1, 2, 4 and 5 to 10
P-10 series	-	Returned postal covers addressed to defendants 3 and 11

Witnesses examined on the side of defendants:--

D.W.1 - Mr.Armstrong @ Raja (Eleventh defendant)

Documents marked on the side of defendants:- Nil

Court witness and Court document : Nil

sd/.G.C.J

28.10.2015

//Certified to be a true copy//
Dated this the day of 2016

R.s/10.02.2016

COURT OFFICER

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