

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

C.S.No.909 of 1999

1.Huseini Bhai Salehbhai Mattoo
 2.Siraj Bhai Salehbhai Mattoo
 3.Mohammed Bhai Salehbhai Mattoo
 4.Mannan Bhai Salehbhai Mattoo
 5.Jaitun Bai Salehbhai Mattoo
 6.Gulsan Bai Salehbhai Mattoo ... Plaintiffs

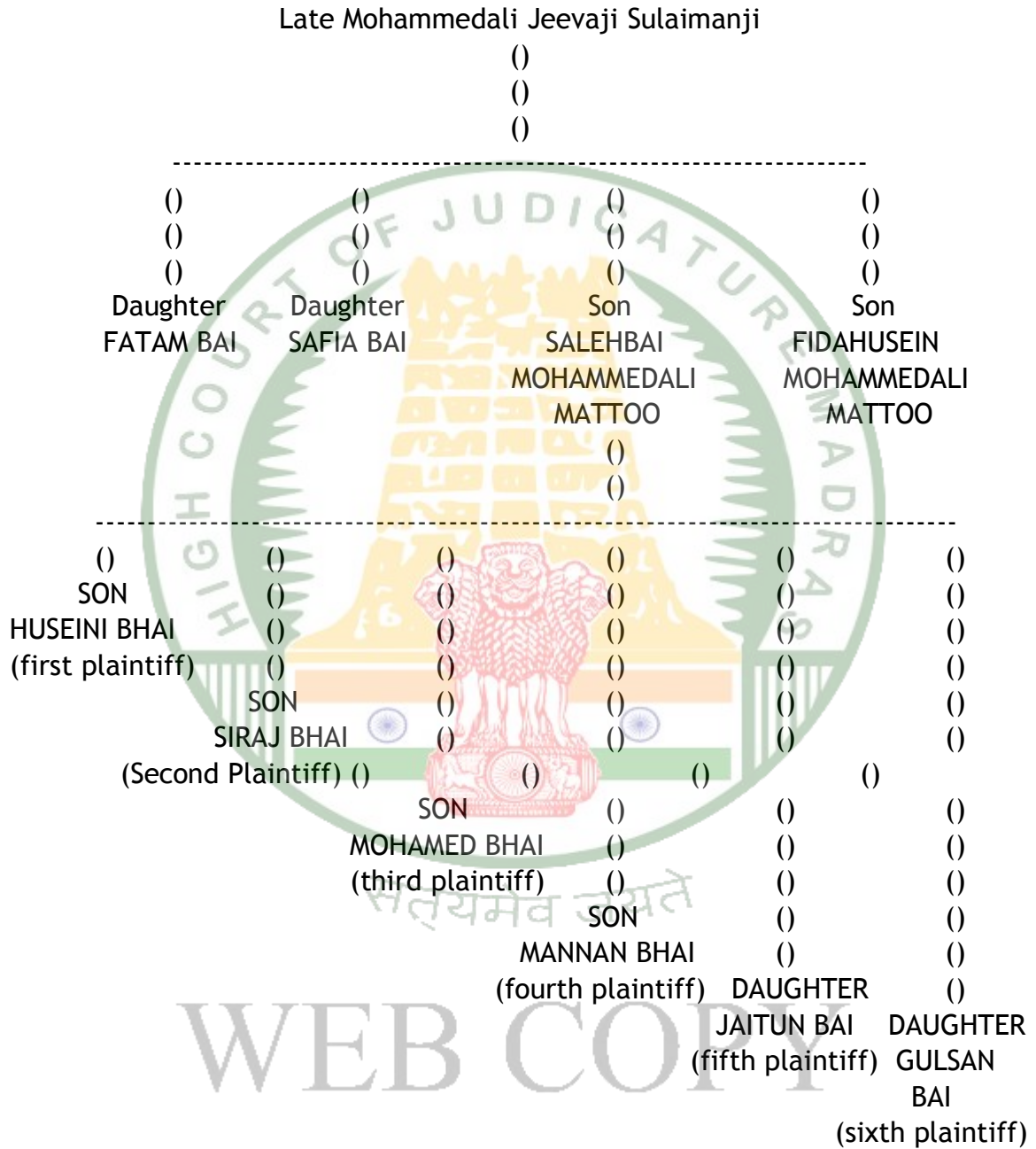
Versus

1.Khadija Bai Fidahusein (deceased)
 2.Hajaira Bai Mohammed Bai
 3.Sakina Bai Yusuf Bai
 4.Duriya Bai Mohd. Bai
 5.Shamina Bai Sabbir Bhai
 6.Akila Bai Yusuf Bhai
 (defendants 2 to 6 are impleaded as the
 legal heirs of the deceased first defendant
 as per the order of this Court dated 19.08.2010)
 ... Defendants

Plaint filed under Order IV Rule 1 of O.S.Rules read with Order VII Rule 1 of CPC praying to pass a judgment and decree against the defendants declaring that the plaintiffs are jointly entitled to $\frac{1}{2}$ share in the schedule mentioned property and for partition and separate possession of that half share in the schedule mentioned property; to appoint an Advocate Commissioner to divide the schedule mentioned property by metes and bounds and allot half share to the plaintiffs; to direct the defendants to render a true and correct account of the income and expenditure pertaining to schedule mentioned property from 01.04.1996 to date and to pay the ascertained amount to the plaintiff with interest at 18% from the date of plaint; to pass a decree for mesne profits from the date of plaint for the income of the schedule mentioned property; to direct the defendants to pay the costs of the suit and to grant such further or other reliefs.

For Plaintiff : Mr.K.Ashok Chakravarthy

For Defendant : Set ex parte

JUDGMENT**FAMILY TREE OF LATE MOHAMMEDALI JEEVAJI SULAIMANJI**

FIDAHUSEIN MOHAMMEDALI MATTOO

()
 ()
 ()

()	()	()	()	()	()
()	()	()	()	()	()
WIFE	()	()	()	()	()
KAHDIJA BAI	()	()	()	()	()
(first defendant)	()	()	()	()	()
	()	()	()	()	()
DAUGHTER	()	()	()	()	()
HAJAIRA BAI	()	()	()	()	()
(Second defendant)	()	()	()	()	()
	()	()	()	()	()
DAUGHTER	()	()	()	()	()
SAKINA BAI	()	()	()	()	()
(Third defendant)	()	()	()	()	()
	()	()	()	()	()
DAUGHTER					
DURIYA BAI					
(Fourth defendant)					
DAUGHTER					
SHAMINA BAI					
(Fifth defendant)					
DAUGHTER					
AKILA BAI					
(Sixth defendant)					

2. The plaintiffs would aver as follows:

2.1. The plaintiffs would state that one Mohammedali

Jeevaji sulaimanji was the paternal grand father of the plaintiffs and defendants 2 to 6 and he acquired absolute rights and interest in respect of the property bearing door Nos.17 and 18, Perianna Maistry Street, Chennai-600 001

(its over and above mentioned plaint property) in and by a deed of

release dated 08.05.1934, registered at the office of the

Registrar of Assurances, Madras, Chengleput and he died on 17.10.1936 at Sidhpur Village, State of Gujarat, leaving behind his two sons viz., Salehbhai Mohammedali Mattoo and Fidahusein Mohammedali Mattoo and his two daughters viz., Safia Bai Mohammedali and Fatambai Mohammedali to succeed to the schedule property in accordance with law of succession applicable to Mohammedans. During the year 1974, the two daughters of Mohammedali Jeevaji Sulaimanji had relinquished all their right, title and interest in the schedule property in favour of their two brothers viz., Salehbhai Mohammedali Mattoo and Fidahusein Mohammedali Mattoo and ever since they were in uninterrupted possession and enjoyment of the schedule mentioned property.

2.2. The plaintiffs would further aver that their father Salehbhai Mohammedali Mattoo was the elder of two sons of Mohammedali Jeevaji Sulaimanji and the younger son was Fiadahusein Mohammedali Mattoo, the husband of the first defendant and the father of defendants 2 to 6. The father of the plaintiffs shifted residence to Gujarat some time during the year 1962 and instructed and authorized his younger brother viz., Fidahusein Mohammedali Mattoo to collect the rent and render accounts to him periodically. It was also followed by the said person as the co-owner of the schedule property until the death of his elder brother on 30.12.1989. On the demise of Fidahusein Mohamedali

Mattoo on 30.12.1989 at Chennai, the defendants 1 to 6 have succeeded to his estate and took over the management of the schedule property for themselves and also for and on behalf of the plaintiffs' father and thereby appropriating the income therefrom. They did not transfer the share of income of the plaintiffs' father, who was entitled to a half share in the schedule property as its co-owner along with his deceased brother. It is further stated by the plaintiffs that their father who was too old to travel, directed him to meet the defendants and take steps to divide the schedule property by metes and bounds into two halves and after such division to take possession of one half of the schedule mentioned property and inspite of repeated requests and demand made, the defendants had postponed the same and also not rendered true account of the rental income right from 01.01.1990. The father of the plaintiffs also died on 05.05.1994 at Sidhpur in Gujarat, leaving behind the plaintiffs as his only surviving legal heirs and on their behalf, legal notice dated 17.07.1996 was issued, for which, the defendants sent a response with untenable allegations. Since the efforts made by the plaintiffs' to get the partition of the property as well as to allot share to the plaintiffs and to render true and correct account of the income and expenditure did not fructify, they come forward to file the present suit.

3. On service of summons, the defendants engaged the service of Mr.Ramamoorthy and thereafter, there was no representation on their behalf. Recording of evidence has also commenced and P.W.1 was in the box and after completion of examination, there was no representation on behalf of the defendants and therefore, the learned Master has directed listing of the matter before this Court for passing appropriate orders. Accordingly, the suit was listed before this Court and on 11.12.2014, this Court passed orders that all the defendants were set ex parte and directed the listing of the matter to the learned Master for continuation of evidence.

4. The third plaintiff on his behalf and on behalf of other plaintiffs, has filed proof affidavit in lieu of chief examination and marked Exs.P1 to P4.

5. The learned counsel appearing for the plaintiffs has drawn the attention of this Court to the averments made in the plaint and documents and would submit that by virtue of the sale deed dated 08.05.1934, Mohammedali Jeevaji Sulaimanji had acquired absolute right and interest in respect of the property bearing door Nos. 17 and 18, Perianna Maistry Street, Chennai - 600001 and he died on 17.10.1936. Thereafter, he was succeeded by his two sons viz., Salehbhai Mohammedali Matto and Fidahusein Mohammedali Mattoo and his two daughters viz., Safia Bai Mohammedalli and Fatambai Mohammdali and the two daughter

has executed a release deed in favour of their brothers and that there is no division by metes and bounds and all along, Fidahusein Mohammedali Mattoo, being the capacity of co-owner, as per the instruction of his brother to collect the rental income and after his demise, the defendants have succeeded to the estate of Fidahuseing Mohammedali Mattoo. In spite of repeated request of the plaintiffs for partition and sharing of income, they did not do so and hence, the plaintiffs are constrained to file the present suit and prays for appropriate orders.

6. This Court, upon perusal of the pleadings, framed the following issues:

1) Whether the Mohammedali Jeevaji Sulaimanji has absolute right and interest in respect of the suit schedule property?

2) Whether the sons and daughters of Mohammedali Jeevaji Sulaimanji after his demise have succeeded to his estate and by virtue of the release deed executed by two daughters, the sons of Mohammedali Jeevaji Sulaimanji had acquired right, title and interest?

3) Whether the plaintiffs are entitled to judgment and decree as prayed for?

4) To what other reliefs, the plaintiffs are entitled?

Issue No.1

7. A perusal of the proof affidavit in lieu of chief

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examination would disclose that Mohammedali Jeevaji

Sulaimanji has absolute right and interest in respect of the suit property by virtue of registered sale deed dated 08.05.1934 and he died intestate and subsequently, his two sons and two daughters have succeeded to the said estate and his two daughters had executed a release deed in favour of their two brothers. Since there is no serious dispute as to the title and interest, Issue No.1 is answered in affirmative in favour of the plaintiffs.

Issue No.2

8. As already, this Court, while answering issue no.1, has found that on the demise of Mohammedali Jeevaji Sulaimanji, who died intestate, his two sons and daughters had succeeded his estate and two daughters had also executed the release deed in favour of their two brothers and thereby Salehbhai Mohammedali Mattoo and Fidahusein Mohammedali Mattoo had succeeded to the estate of their father. Therefore, issue No.2 is answered accordingly.

Issue No.3

9. It is the specific case of the plaintiffs that Salehbhai Mohammadali Mattoo had settled at Gujarat and therefore, instructed his younger brother viz., Fidahusein Mohammedali Mattoo, who was staying at Chennai, to collect the rent and render accounts, but it was not done so. Only after his demise on 30.12.1989, the defendants 1 to 6 have succeeded to the estate of Fidahusein Mohammedali Mattoo and thereafter, they neither acceded to the request made by

the plaintiffs for partition and separate possession and also rendered accounts. The plaintiffs in this regard, through their lawyer, has sent a notice under Ex.P3 demanding partition, separate possession and also to render accounts, for which, on behalf of the defendants, a reply under Ex.P4 was sent stating that they are taking legal advise in the matter and therefore, the plaintiffs were requested to wait till the defendants obtained suitable advise and after which a detail reply would be sent. Admittedly, after receiving Ex.P4, the defendants did not send any response.

10. This Court in the light of the pleadings, oral and documentary evidence is of the view that the plaintiffs are entitled to a judgment and decree as prayed for.

11. In the result, there shall be a preliminary decree declaring that the plaintiffs are entitled to half ($\frac{1}{2}$) share of the schedule mentioned property and also entitled for separate possession of the half share in the schedule mentioned property. The defendants are directed to give a correct account of the income and expenditure pertaining to schedule mentioned property from 01.04.1996 till the date of the decree with interest at the rate of 12% p.a. and from the date of decree till the date of realisation at the rate of 6% p.a. The plaintiffs are entitled to mesne

profits and it shall be determined under Order XX Rule 18 CPC. The plaintiffs are also entitled to the cost of the suit.

List of Witnesses:

PW1 : Mr.Mohammed Bahi Salehbhai Mattoo

List of Exhibits:

<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
Ex.P1	Certified copy of sale deed	26.01.1907
Ex.P2	Copy of Death certificate of my father Salehbhai	04.06.1994
Ex.P3	Office copy of notice	17.07.1996
Ex.P4	Copy of reply notice	-----

sd/.M.S.N.J

10.03.2016

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

S.s/29.04.2016

COURT OFFICER

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