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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29-02-2016

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

CIVIL SUIT No.46 of 2014

1.P.Janagi
2.Gajalakshmi
3.Rajamani
4.Tamilselvi .. Plaintiffs

vs

1.Egambaram
2.Rajendran alias Govindaraj
3.Babu .. Defendants

Civil suit filed under Order IV Rule 1 of High Court O.S. Rules read with Order VII Rule 1 of the Code of Civil Procedure praying for a judgment and decree for partition of the suit schedule property into seven equal shares for allotment of four such share to the plaintiffs (1/7th share to each plaintiff) and for separate possession and continuous enjoyment as prayed for in the plaint; for permanent injunction restraining the defendants, their men, agents or servants from altering, encumbering, or alienating or dealing with in any manner of the suit schedule property; for past mesne profits and also for the future mesne profits and for costs.

For Plaintiffs : Mr.J.Ramakrishnan

<https://hcservices.ecourts.gov.in/hcservices/>
For Defendants : D1 to D3 set ex-parte on
30.9.2015

**JUDGMENT**

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The plaintiffs would aver in the plaint, that they and the defendants are brothers and sisters and the suit schedule property was purchased by Tmt.G.Muniammal, wife of Late V.Gopal Pillai, (grandmother of the plaintiffs and defendants), through a Court auction sale, under a registered sale deed bearing Document No.1836 of 1941 dated 1.9.1941, registered in the Office of the Sub-Registrar, Madras-Chingleput and upon her demise, it devolved on her son viz. Thiru G.Parthasarathy Pillai. They would further aver that Parthasarathy Pillai also died on 26.10.1985, and so also his wife P.Angammal, who died on 13.4.2011, and on their demise, the suit schedule property devolved on the plaintiffs and defendants.

2.The plaintiffs would state that there are 10 tenants in the suit schedule property and it fetches a total rent of Rs.15,000/- per month and when Mrs.P.Angammal was alive, she used to collect rents from the tenants and subsequent to her demise, the defendants are collecting the rent at the rate of Rs.15,000/- per month, from the tenants.

3.It is the case of the plaintiffs that they are being the female legal heirs of Late G.Parthasarathy Pillai and Late P.Angammal and also the granddaughters of Late V.Gopal



Pillai and Late G.Muniammal, are entitled to a share in the suit schedule property and though repeated requests were made for partitioning the suit schedule property, the defendants kept quiet and therefore, a legal notice dated 2.8.2013, was issued calling upon the defendants to partition the property by metes and bounds and allot 1/7th share each to the plaintiffs and though it was acknowledged by the defendants 1 and 3 and the legal notice sent to the second defendant, returned unserved, they have not taken any steps to partition the property and instead, the defendants are trying to alienate the property. Therefore, the plaintiffs came forward to file the present suit for partition and separate possession of 1/7th share each; permanent injunction restraining the defendants from alienating, encumbering or dealing with the property and also for past and future mesene profits and costs of the suit.

4.The suit was listed before the Court on 30.9.2015, and on that date, there was no representation on behalf of the defendants, and they have not filed their written statement and hence, they were called absent and set ex-parte. The matter was listed before the learned Additional Master No.III, for recording the evidence and the fourth plaintiff, on her behalf and also on behalf of the other plaintiffs, filed her proof affidavit in lieu of chief-



examination, marking Exs.P1 to P5.

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5.The learned Counsel appearing for the plaintiffs, would submit that admittedly, the predecessors-in-title died intestate and therefore, the plaintiffs being the female legal heirs of Late G.Parthasarathy Pillai and Late P.Angammal, and also the granddaughters of Late V.Gopal Pillai and Late G.Muniammal, are entitled to 1/7th share each in the suit schedule property, and since the defendants are collecting rents at the rate of Rs.15,000/- per month from the tenants of the suit property, they are entitled to past and future mesne profits and prays for decreeing of the suit with costs.

6.This Court has perused the pleadings and considered the submission made by the learned Counsel appearing for the plaintiffs, and also perused the exhibits.

7.The following issues are framed for adjudication:-

(i) Whether the plaintiffs being the legal heirs of Late G.Parthasarathy Pillai and Late P.Angammal and also the granddaughters of Late V.Gopal Pillai and Late G.Muniammal, are entitled to 1/7th share in the suit schedule property?



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(ii) Whether the defendants are entitled to collect a sum of Rs.15,000/- per month towards rent from the tenants of the suit property and appropriate the same among themselves?

(iii) Whether the plaintiffs are entitled to get a judgment and decree as prayed for?

(iv) To what other reliefs, the plaintiffs are entitled to?

8. **ISSUE No. (i)** :- Under Ex.P1 sale deed, dated 1.9.1941, the suit schedule property was purchased by G.Muniammal, wife of Late V.Gopal Pillai, through the Court auction and on her demise, it devolved on her son viz. G.Parthasarathy Pillai, and he died on 26.10.1985, intestate and his wife also died on 13.4.2011, intestate. It is also evidenced by Exs.P2 and P3, their death certificates. It is the specific case of the plaintiffs that since their parents died intestate, they are entitled to 1/7th share each in the suit schedule property, along with the defendants. Prior to the institution of the suit, they also issued a legal notice under Ex.P4 and though it was acknowledged by the defendants 1 and 3 and notice sent to the second defendant returned unserved, they did not respond and despite their appearance in the suit, they did



not file their written statement. Therefore, this Court is of the considered view that since the parents of the plaintiffs died intestate, they are entitled to a share as claimed in the suit. Therefore, issue No.(i) is answered in affirmative and in favour of the plaintiffs.

9. ISSUE No. (ii):- It is the specific case of the plaintiffs that the defendants are collecting a sum of Rs.15,000/- per month towards rent from the tenants of the suit schedule property. Since this Court has held while answering issue No.(i), that the plaintiffs are entitled to 1/7th share in the suit schedule property, they are also entitled to get a share in the said rental income. Therefore, this issue is answered accordingly.

10. ISSUE Nos. (iii) and (iv):- In the light of the findings given in respect of issue Nos.(i) and (ii), the plaintiffs are entitled to a judgment and decree as prayed for.

11. In the result, there shall be a preliminary decree for partition and separate possession of 1/7th share in the suit schedule property, in favour of the plaintiffs. The defendants are also restrained by way of permanent injunction, from alienating, encumbering and dealing with the suit schedule property. The plaintiffs are also entitled to mesne profits for three years prior to the date



of institution of the suit, and also entitled to future mesne profits. The plaintiffs are entitled to the costs of the suit.

PLAINTIFFS' SIDE WITNESSES AND EXHIBITS:-

P.W.1 Tamil Selvi

Ex.P1 1.9.1941 Certified copy of the registered
sale deed (Doc.No.1836/1941 at
Joint SRO, North Madras)

Ex.P2 Photocopy of the death certificate
of G.Parthasarathy

Ex.P3 Copy of death certificate of
P.Angammal

Ex.P4 16.8.2013 Copy of the legal notice issued by
(series) the plaintiffs' counsel to the
defendants 1 to 3 along with the two
postal acknowledgement cards

Ex.P5 Returned postal envelope sent to
the second defendant

sd/.M.S.N.J
29.02.2016

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

S.s/06.06.2016

COURT OFFICER

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