

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 28-04-2016**

**CORAM**

**THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN**

**CIVIL SUIT No.641 of 2012**

1.E.Sathyavathamma (deceased)  
2.E.S.Reddy  
3.E.Anil Kumar Reddy  
4.Uma V.Chandru  
5.Asha Kiron Jitendra  
6.Usha Saxena  
(plaintiffs 2 to 6 are brought on  
record as Legal Heirs of the  
deceased sole plaintiff as per  
order dated 29.6.2015, in  
A.Nos.3667 to 3669/2015) .. Plaintiffs

vs

Niranjan Reddy .. Defendant

Civil suit filed under Order VII Rule 1 of Code  
of Civil Procedure and Order IV of Original Side Rules  
praying for a judgment and decree partitioning the suit  
property by metes and bounds granting 2/3<sup>rd</sup> undivided  
right of share and interest in the suit property to the  
plaintiff and 1/3<sup>rd</sup> undivided right of share and interest  
in the suit property to the defendant more fully  
described in the Schedule hereunder and after passing a  
Preliminary decree after appointment of an Advocate  
Commissioner who can measure and divide the property by  
metes and bounds and file a report before this Court  
<https://hcservices.ecourts.gov.in/hcservices/>  
within the stipulated time, for passing final decree and

failure to divide the property by metes and bounds the property can be bought by either by the plaintiff or defendant and in case of such failure, the property should be sold through public auction and the proceeds can be shared between the plaintiff and the defendant according to their respective shares and granting a permanent injunction restraining the defendant, his agents or servants or from any one in dealing with the suit property by the defendant in respect of the share of the plaintiff in the suit property and not to interfere with the possession of the plaintiff in respect of her share and for costs.

For Plaintiffs : Mrs.K.Aparnadevi

For Defendants :Set ex-parte on 24.2.2014

**JUDGMENT**

सत्यमेव जयते

Originally, the suit was instituted by Tmt.E.Sathyavathamma and pendency of the suit, she died and her legal representatives were brought on record as plaintiffs 2 to 6.

2.The plaint averments are as follows:-

2(i) The original plaintiff purchased the suit

schedule mentioned property from Tmt.Suhrulathamma, who

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had 2/3<sup>rd</sup> undivided right of share and interest in the

said property, and her son viz. the defendant, is having 1/3<sup>rd</sup> of such a right and the property is a residential house. The defendant filed C.S.No.884/1992 on the file of this Court, praying for declaration and other consequential reliefs, against his mother, the original plaintiff and the tenant viz. Mr.K.B.Subramaniam. The said suit was transferred to the file of the City Civil Court, Chennai and renumbered as O.S.No.12671/1996 and it ended in dismissal on 16.6.2003. The appeal in A.S.No.363/2003 filed on the file of City Civil Court, also ended in dismissal and so also the second appeal in S.A.No.659 of 2007, on the file of this Court. Thus, the right, title and possession of the original plaintiff with regard to the 2/3<sup>rd</sup> share in respect of the suit property, has become final.

2(ii) The defendant in spite of request made, and notice sent, calling upon him to divide the suit property and give 2/3<sup>rd</sup> share, he has not done so and therefore, the plaintiff came forward to file the present suit for partition and separate possession and other consequential reliefs.

3.The defendant was served and he did not enter appearance and file the written statement. Therefore, he was called absent and set ex-parte on 24.2.2016.

Subsequently, the original plaintiff died and as already

stated, her legal representatives have been brought on record.

4.Thiru E.S.Reddy viz. the second plaintiff, had filed his proof affidavit in lieu of chief-examination, and also marked Exs.P1 to P8.

5.The learned Counsel appearing for the plaintiffs, has drawn the attention of this Court to the pleadings and oral and documentary evidences and would submit that a sale deed was executed under Ex.P2, by the mother of the defendant on 11.3.1991, conferring her 2/3<sup>rd</sup> right in respect of the schedule mentioned property, and the defendant has initially filed C.S.No.884 of 1992 on the file of this Court, praying for declaration declaring that the settlement deed dated 23.3.1982, is invalid, fraudulent, unenforceable and liable to be cancelled and set aside and not binding on the plaintiff and further declaring that the sale deeds dated 11.3.1991, (Document No.410 and 411 of 1991 - on the file of the Sub-Registrar of Assurances, Mylapore), executed by his mother in favour of the second defendant, are liable to be cancelled and set aside and also for permanent injunction restraining the defendants therein from interfering with the possession and it was transferred to the file of the City Civil Court and renumbered as O.S.No.12671/1996 and the said suit after contest, came to be dismissed on

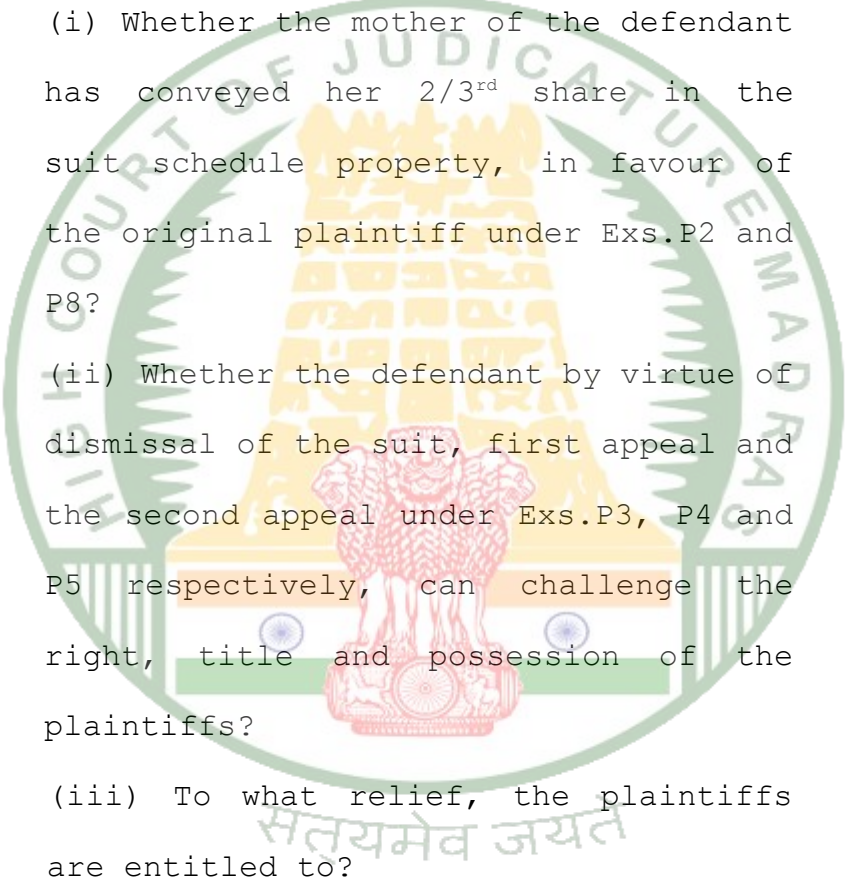
16.6.2003.

6.It is the further submission of the learned Counsel appearing for the plaintiffs, that the defendant aggrieved by the said judgment and decree, filed an appeal in A.S.No.363 of 2003, on the file of the Court of Additional District Judge, FTC No.2, and it was also dismissed on 9.3.2007, under Ex.P4, and the further challenge made by filing S.A.No.659 of 2008, also ended in failure as evidenced by Ex.P5, dated 7.3.2008, and therefore, it is not open to the defendant to challenge the right, title and possession of the plaintiffs.

7.The learned Counsel appearing for the plaintiffs, would contend that the original plaintiff in her capacity as the owner, has also instituted eviction proceedings against the tenant viz. K.B.Subramaniam, and was successful and the revision petitions filed by the tenant in C.R.P.(NPD) Nos.1489 and 1490 of 2003, were also dismissed on 7.3.2008, under Ex.P7, and prior to the institution of the suit, a legal notice was also issued under Ex.P6, dated 3.4.2012, and though it was acknowledged, the defendant did not choose to respond and hence, prays for decreeing the suit.

by the learned Counsel appearing for the plaintiffs, and also perused the oral and documentary evidences.

9.The following issues are framed for consideration:

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- (i) Whether the mother of the defendant has conveyed her 2/3<sup>rd</sup> share in the suit schedule property, in favour of the original plaintiff under Exs.P2 and P8?
  - (ii) Whether the defendant by virtue of dismissal of the suit, first appeal and the second appeal under Exs.P3, P4 and P5 respectively, can challenge the right, title and possession of the plaintiffs?
  - (iii) To what relief, the plaintiffs are entitled to?

10.**ISSUE No. (i) :-** The mother of the defendant has conveyed 2/3<sup>rd</sup> right in the suit schedule property, in favour of the original plaintiff under Exs.P2 and P8. The defendant also filed a suit in C.S.No.884/1992 on the file of this Court, and it was transferred to the file of the City Civil Court and renumbered as O.S.No.12671/1996, wherein, he prayed for declaratory and other consequential reliefs. It is to be pointed out at this

juncture, that the mother of the defendant was arrayed as first defendant; the original plaintiff was arrayed as second defendant and the tenant in respect of the premises, was arrayed as third defendant. The said suit after contest, came to be dismissed on 16.6.2003, under Ex.P3, and the challenge made to the said judgment and decree before the first appellate Court, had also ended in dismissal as evidenced under Ex.P4. The defendant made a further challenge to the judgment and decree passed by the first appellate Court, by filing S.A.No.659/2008, which was also dismissed under Ex.P5, dated 7.3.2008, and no further appeal has been preferred to the Hon'ble Supreme Court of India and therefore, the judgment and decree have become final. It is also to be pertinent to point out at this juncture, that the original plaintiff in her capacity as landlady, has instituted eviction proceedings against the tenant, and was successful as evidenced under Ex.P7 - the fair and decreetal orders dated 7.3.2008, in CRP (NPD) Nos.1489 and 1490 of 2003. In view of the above, the right, title and possession of the original plaintiff are not in serious dispute. Therefore, issue No.(i) is answered in affirmative and in favour of the plaintiffs.

**11. ISSUE No.(ii):-** This Court in respect of

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issue No.(i), has given a finding that the original

plaintiff was the absolute owner of the suit property. The original plaintiff is no more and her legal representatives came on record and they are having right, title and possession in respect of the suit schedule property. A pre-suit notice was also issued, for which the defendant did not respond. Therefore, issue No.(ii) is answered in negative and in favour of the plaintiff.

12.**ISSUE No.(iii):-** In the light of the findings given in respect of issue Nos.(i) and (ii), the plaintiff is entitled to succeed in the suit.

13.In the result, the civil suit is decreed with costs and there shall be a judgment and preliminary decree granting (a) partition of the suit property by metes and bounds granting the original plaintiff's 2/3<sup>rd</sup> undivided right of share and interest in the suit property to the plaintiffs 2 to 6 and 1/3<sup>rd</sup> undivided right of share and interest in the suit property to the defendant more fully described in the Schedule, and (b) permanent injunction restraining the defendant, his agents or servants or from any one in dealing with the suit property by the defendant in respect of the share of the plaintiffs 2 to 6 in the suit property and not to interfere with the possession of the plaintiffs 2 to 6 in respect of their share.

**PLAINTIFFS' SIDE WITNESSES AND EXHIBITS:-**

P.W.1 Mr.E.S.Reddy

Ex.P1 21.3.2007 Photocopy of the Power of Attorney executed by the first plaintiff

Ex.P2 11.3.1991 Photocopy of the sale deed dated 11.3.1991, registered as Document No.410/1991 before the SRO, Mylapore

Ex.P3 16.6.2003 Photocopy of the judgment and decree passed in O.S.No.12671/96 by the VIII Assistant City Civil Court, Chennai

Ex.P4 9.3.2007 Photocopy of the judgment and decree passed in A.S.No.363 of 2003 by the Additional District Judge, FTC No.2.

Ex.P5 7.3.2008 Certified copy of the order passed in SA No.659 of 2007

Ex.P6 3.4.2012 Legal notice sent by the plaintiff's Counsel to the defendant

Ex.P7 7.3.2008 Certified copy of the order passed in CRP (NPD) Nos.1489 and 1490 of 2003

Ex.P8 Photocopy of the sale deed executed in favour of the first plaintiff in respect of the suit schedule property

WEB COPY

sd/.M.S.N.J  
28.04.2016

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

S.s/14.07.2016

COURT OFFICER

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