

Application No.2038 of 2017
in
TOS No.10 of 2013

C.V.KARTHIKEYAN, J.

This application has been filed seeking permission to conduct joint trial in TOS No.64 of 2010 and TOS No.10 of 2013.

Both the Testamentary Original Suits relate to the execution of wills by late Kannammal. Late Kannammal wrote two wills dated 15.07.94 and 23.03.2010 and they were registered and they relate to two different properties. Originally, both the suits were filed as original petitions and since the respondent has contested the execution of both the original petitions, they were converted as Testamentary Original Suits. In such circumstances, both the wills have to be proved during trial and it is better that joint trial is conducted so that witnesses need not repeat their evidence and they again need not come to the Court for giving evidence. It is also seen that the parties are also same.

C.V.KARTHIKEYAN, J.

vrc

It is represented by the learned counsel for the respondents that in TOS No.10 of 2013 substantial evidence has been recorded. Whereas in TOS No. 64 of 2010, issues have not been framed. Sufficient safe guards have to be provided to protect the interest of the parties that the evidence already recorded in TOS No.10 of 2013 could not be made better by adducing fresh evidence.

Accordingly, this application is allowed and the office is directed to post both TOS No.64 of 2010 and TOS No.10 of 2013 under the caption 'for framing issues'.

03.07.2017

vrc

Application No.2038 of 2017

in

TOS No.10 of 2013

This suit has been filed seeking partition and separate possession of 1/4th share of the suit schedule property and also for a direction to the first defendant to pay a sum of Rs.1,37,250/- towards mesne profits and also for a permanent injunction restraining the first, second and third defendants from interfering with the plaintiff running a dental clinic and for mandatory injunction to share the rents equally among the plaintiff and the first, second and third defendants and for costs.

The plaintiff is the younger sister of first, second and third defendants. The first and second defendants are her brothers and the third defendant is her sister. They are children of Hayat Singh Rawat and Gora Devi. It has been stated that the suit property in old door No.74, new door No.57, Bajanai Koil street, Choolaimedu, Chennai 600 094 in Town Survey No.95, Block No.10, measuring to an extent of 1 ground 177 sq.ft. land and building originally belong to their father Hayat Singh Rawat, who purchased the same from K.V.Raja by a sale deed dated 30.03.1979 registered as a document under 1172 of 1979 in Sub Registrar Office.

It had been stated that the fourth, fifth and sixth defendants are the tenants in the property. Their father Hayat Singh Rawat died on 05.06.2007. Their mother Gora Devi died on 05.11.2008. Claiming to be a daughter and further claiming as a daughter, she is entitled to undivided 1/4th share in the suit property and claiming share in the rents from the suit properties, this suit has been filed. It had been

further stated that the plaintiff is running a dental clinic in a portion of one shop in the ground floor to an extent of 150 sq.ft. The defendants are also running respective business in the suit property. It had been further stated that the demand of the plaintiff seeking partition was not heeded by the defendants. The plaintiff issued a notice dated 18.02.2011. She has sent another notice dated 09.06.2011. Consequently, she has filed the present suit seeking the reliefs as stated above.

In the present suit, the first, second, fifth and sixth sixth defendants were served notice on 09.12.2011 and the fourth defendant was served notice on 10.02.2011 and the third defendant was served on 28.12.2011. But they had not filed their written statement. Subsequently, this suit has been referred to undefended board and the defendants were set exparte on 21.04.2017.

The plaintiff was directed to exparte on before the Additional Master IV. Accordingly, the plaintiff had adduced evidence on 08.06.2017. She filed her proof affidavit. She again stated in the proof affidavit that she is entitled to 1/4th share and she is also entitled to the relief of permanent injunction protecting her possession and also she is entitled to past and future mesne profits. Among the documents filed by her, which were marked Ex.P.1 to Ex.P.17, Ex.P.1 is the sale deed for the purchase of the property by the father of the plaintiff. Ex.P.2 is the death certificate of her father. Ex.P.3 is the legal heir certificate of her father. Ex.P.4 is the

death certificate of her mother. Ex.P.5 is a copy of the notice dated 18.02.2011 and Ex.P.9 is the copy of the notice dated 09.06.2011. Ex.P.6, P.7, P.10, P.11, P.12 are acknowledgment cards for service of the above notice. Ex.P.8 is the Encumbrance Certificate of the suit property and Ex.P.13 is the

While carefully perused the oral and documents evidence, it is clear that the plaintiff, first, second and third defendants are brothers sisters and they are daughters and sons of Hyyat Singh and both died intestate. To evidence such fact, Ex.P.2 and P.4 has been marked. Ex.P.1 is the legal heir certificate of their father. Subsequently, the plaintiff has stated that plaintiff is entitled to $1/4^{\text{th}}$ share in the suit property. Accordingly it is held that the plaintiff is entitled for a preliminary decree of the and for permanent injunction restraining the defendants from interfering with the peaceful possession of the plaintiff and running the clinic. In so far as the relief of pas, mesne profits and future mesne profits and share in the rents, the plaintiff is entitled to seek appointment of advocate commissioner, who shall inspect the property, suggest the method of dividing the same into four equal shares and allot $1/4^{\text{th}}$ share to the plaintiff. The rent paid from the date of the suit by the tenants, who are fourth, fifth and sixth defendants, and thereafter mesne profits can be determined at the time of passing of the final decree. Since the plaintiff has filed the as against her brothers and sister, there shall be no cost.

Accordingly, a preliminary decree is passed in the above terms.

No cost.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2017

Pronounced on : .07.2017

Coram

The Hon'ble Mr.Justice C.V.KARTHIKEYAN

C.S.No.714 of 2011

G.Usha Rao

...Plaintiff

Vs.

1. Mr.Dharamvir Singh Rawat
2.Mr.Mohan Singh Rawat
3.Mrs.S.Saraswathy
4.Mr.Palanichandran
5.Mr.S.S.Sekar
6.Mr.Kanagaraj
...Defendants

Prayer :

This suit is filed Under Order VII Rule 1 of C.P.C and Order IV

Rule 1 of Original Side Rules to pass a Judgment and Decree against the Defendants:

a. For a preliminary decree of partition allotting the plaintiff's $\frac{1}{4}^{\text{th}}$ share right and interest in the Suit Property and put the plaintiff in separate possession.

b. To pass a final decree in terms of the preliminary decree by appointing an advocate commissioner and to divide the suit property by metes and bounds and to allot the plaintiff's $\frac{1}{4}^{\text{th}}$ share in the suit property.

c. To direct the First Defendant to pay a sum of Rs.1,37,250/- towards the plaintiff's $\frac{1}{4}^{\text{th}}$ share in the past profits received and enjoyed by the first defendant from the suit property namely rental income and also the plaintiff's $\frac{1}{4}^{\text{th}}$ share from the future rental income from the date of the suit.

d. For a permanent injunction restraining the defendants 1 to 3 their men, agents, representative and legal heirs from in any way/manner disturbing the plaintiff's peaceful running of her Dental clinic in the portion of the Suit property.

e. For a mandatory injunction directing the defendants 4 to 6 to share the rents equally to the plaintiff and the defendants 1 to 3.

f. To pay the costs of the suit.

For Plaintiff : Mr.S.Satish Rajan

For Defendants 1 to 3 : Mr.P.B.Ramanujam

JUDGMENT

This Suit has been filed seeking partition and seperate possession of 1/4th share in the suit scheduled property and also filed for direction to the first defendant to pay sum of Rs.1,37,250 towards past mesne profits, and also for a Permanent Injunction restraining the first, second, third defendants from interfering with plaintiffs peaceful running of Dental clinic and for Mandatory Injunction to share the rents equally among the plaintiff and first, second and third defendants and **for** cost. The plaintiff is the younger sister of the first and second and the third defendants.

2.The first and second defendants are her brothers, and third defendant is her sister. They are all children of Hayat Singh Rawat. It has been stated, that the suit property in old door No.74, new door No.57, Bajanai Koil Street, choolaimedu, Chennai-600 094 in Town

Survey No.95, Block No.10 measuring to an extent of one ground and 1771 Sq.ft., of land and building originally belonged to their father Hayat Singh Rawat, who has purchased same from K.V.Rajan by a sale deed dated 30.03.1979, registered as document No.1172 of 1979 in the Office of Sub-Registrar, Kodambakkam.

3. It has been stated the four, five and sixth defendants are tenants in the suit property. The father died on 05.06.2007, their mother Gora Devi died on 05.11.2008. Claiming to be a daughter and further claiming that the daughter entitled 1/4th share in the suit property and a share in the rents from the suit property, this suit has been filed. It has been further stated the plaintiff is running Dental clinic in a portion of one of the shops in the ground floor to an extent of 150 Sq.ft. The other defendants are also running their respective business in the suit property.

4. It had been stated the demand of the plaintiff seeking for partition was not heeded by the defendants. The plaintiff issued a notice dated 18.02.2011. She also sent another notice on 09.06.2011. Consequently, she has filed the present suit seeking the reliefs stated above. The notice was served on the first, second, five and six

defendants were served on **09.06.2011** and the notice on the fourth defendant was served on **10.02.2011**.

5. The third defendant was served on 28.12.2011. They have not filed their written statement. Consequently the suit was referred to undefended board and the defendants were set exparte on 21.04.2017. The plaintiff was directed to give exparte evidence before the Additional Master No.IV. accordingly the plaintiff adduced the evidence on 08.06.2017. She filed proof affidavit and she agains statedin the proof affidavit that she is entitled to undivided 1/4th share and that she also entitled to relief of Permanent Injunction, possession and also she is entitled to past and future mesne profits along with the defendants. Among the documents filed by her which was marked as Ex.P.1 to P.13, Ex.P.1 is the sale dated for purchase of the property by the father of the plaintiff. Ex.P.2 is the death certificate of her father, Ex.P.13 is the legal heirship certificate of her father. Ex.P.4 is the death certificate of her mother. Ex.P.5 is the copy of the notice dated 18.02.2011 and Ex.P.9 is the copy of notice dated 09.06.2011, Ex.P.6, P.7, P.10, P.11 and P.12 are acknowledgment for service of the above notice. Ex.P.8 is the Encumbrance Certificate. Ex.p13 is the Rough

Sketch.

While carefully considering the oral and documentary evidence, it is clear that the plaintiff, first, second and third defendants are brothers and sisters. They are the daughters and sons of Hayat Singh Rawat and Gora Devi, who died intestate. To evidence such fact Ex.P.2, P.3, Ex.P.4 are marked. Ex.P.2 is the legal heirship certificate of her father.

7. Consequently, I hold that the plaintiff is entitled to 1/4th share in the suit property. Accordingly a preliminary decree is passed, a decree for permanent Injunction also granted restraining the defendants from interfering with peaceful possession of plaintiff's Dental clinic. In so far as the relief of past mesne profits and share in the rents are concerned, the plaintiff is entitled to seek appointment of an Advocate Commissioner inspect the property and suggest the method of dividing the same and to allot 1/4th to the plaintiff and to determine the rent paid from the date of the suit by the 4, 5, 6th defendants, who are tenants and thereafter, the mesne profits can be determined in the final decree. Since suit has been filed against her brothers and sisters, there shall be no cost.

Accordingly, preliminary decree is passed in the above terms.

.07.2017

TKP/VRC
Index : Yes/No

To

1.

C.V.KARTHIKEYAN,J.
Tkp/vrc

**Pre delivery Judgment in
C.S.NO.714 OF 2011**

03.07.2017

<http://www.judis.nic.in>