

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.01.2017

PRONOUNCED ON : 08.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.140 of 2011

M.Rajamanohari

.. Plaintiff

vs.

1. S.Tenmadhu

2. M.Kavitha

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules 1956 read with Order VII Rule 1 CPC praying for the following judgment and decree against the defendant.

(i) a) To divide the schedule 'A' mentioned property in ground floor and to allot 1/3 share in the property;

b) To divide the schedule 'B' mentioned property and to allot 1/3 share in the property;

c) To divide the schedule 'C' mentioned property and to allot 1/3 share in the property;

(ii) a) To pay the mesne profits of Rs.8,59,950/- to the plaintiff accrued as such from schedule 'A' and 'B' mentioned property (from April 2003 to till date).

b) costs of the suit;

For Plaintiff : Dr.J.Daniel

For defendants : Mr.K.G.Vasudevan

J U D G M E N T

The suit is filed for partition and to allot 1/3 share in the ground floor in 'A' schedule property and 1/3 share in the 'B' and 'C' schedule property and for mesne profits.

2. The plaintiff is the daughter of the first defendant and sister of the second defendant. The plaintiff's father was allotted an AP plot of 880 sq.ft. with a built up area of about 350 sq.ft. in O-Block Ganapathy Colony, Anna Nagar (East), Chennai by the Tamil Nadu Housing Board during his service and the

entire sale consideration was paid by him. The whole family was residing there. After his demise, the property was transferred to to the first defendant in 1990. The plaintiff by availing loan and out of her salary income built one portion about 150 sq.ft. for a shop in the ground floor and a house measuring about 500 sq.ft. in the first floor in the schedule 'A' mentioned property during the year 1992-1993. The whole family stayed in the ground floor house and the first defendant let the shop and first floor house for rent. The plaintiff, even after her marriage continued her job in Chennai. Her younger sister who was physically and mentally challenged died in February 1996. The first defendant entered into an agreement for sale of the 'A' schedule property for a sale consideration of Rs.8,60,000/- and received an advance of Rs.2,80,000/-. Out of the said advance amount, she has purchased another property in Mogappair West measuring 468 sq.ft. Thereafter, the sale agreement could not be finalised and the original buyer demanded for the refund of the advance amount. The plaintiff had mobilised funds and refunded the advance amount received by the first defendant. After considering the plaintiff's contribution and support to the welfare of the family, the first defendant registered a settlement deed in favour of the plaintiff in respect of the first floor portion of schedule 'A' property in August 1998 as per Doc.No.2460 of 1998. The second defendant is also mentally challenged and the first defendant has not spent a single pie even during her marriage. In all the properties, the plaintiff has 1/3 share. Hence, prayed for

partition.

3. The brief averments of the written statement filed by the first defendant and adopted by the second defendant :

Denying the entire allegations in the plaint and the alleged payment made by the plaintiff towards the refund of the advance amount, it is the contention of the defendant that the property in Mogappair has been purchased by her own funds. The allegation that the plaintiff has spent huge amount for treatment of the second defendant and another brother is absolutely false. The plaintiff is not entitled to any share in the 'A' and 'B' schedule properties and she is entitled to 1/3 share in the 'C' schedule property alone. The plaintiff having accepted the settlement deed has no right to seek partition of the suit schedule 'A' mentioned property. The suit schedule 'B' mentioned property was inherited by this defendant from her deceased son Mohan and as the sole owner and she has settled the same in favour of the second defendant. Therefore, the suit is nothing but frivolous one and prayed for dismissal.

4. On the basis of the above pleadings, this Court framed the following issues on 26.10.2015.

1. Whether the plaintiff is entitled to a decree of partition and separate

allotment of 1/3 share?

2. Whether the plaintiff is entitled to mesne profits?

3. Relief and cost.

5. On side of the plaintiff, the plaintiff examined herself as P.W.1 and marked Ex.P.1 to Ex.P.9. On the side of the defendants, the first defendant was examined as D.W.1 and no documents were marked on their side.

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	04.04.2009	Copy of the legal notice sent by the plaintiff to the the first defendant
2.	P-2	15.04.2009	Acknowledgment Card
3.	P-3	16.06.2008	Reply notice sent by the first defendant to the plaintiff
4.	P-4	16.06.2008	Encumbrance Certificate (01.01.1995 to 15.06.2008)
5.	P-5	27.08.1998	Copy of Settlement Deed executed in favour of the plaintiff
6.	P-6	18.09.12014	Copy of Death Certificate of Mr.Selvaraj
7.	P-7	06.09.1991	Copy of Legal Heirship Certificate
8.	P-8	27.02.2001	Copy of Death Certificate of S.Priya
9.	P-9	15.02.2001	Copy of Death Certificate of Mohan

Witnesses examined on the side of the plaintiff:

P.W.1. - Rajamanohari

Witnesses examined on the side of the Defendants :

D.W.1. - Thenmadhu

6. Issue Nos.1 to 3 :

It is admitted by both sides that originally the land to an extent of 880 sq.ft. with a built up area around 350 sq.ft. in O-block Door No.157 was allotted to the plaintiff's father, who is the husband of the first defendant. After his death, a sale deed was executed by the Tamilnadu Housing Board in the name of the first defendant. This fact has not been disputed.

7. It is the specific case of the plaintiff that being elder daughter, she has spent money and constructed one portion for a shop in the ground floor and house measuring about 550 sq.ft. in the 'A' schedule property in the year 1992-1993. Whereas, it is the case of the first defendant that she only put up a construction out of her own funds and the plaintiff has not contributed anything. It is also admitted by the plaintiff herself that in the 'A' schedule property first floor was settled in her favour under Ex.P.5 settlement deed. To prove the settlement, Ex.P.5 settlement deed has also been exhibited before the Court.

Further, there is no evidence on record to countenance the contention of the plaintiff that she had solely contributed for construction of the house. She herself has admitted in her cross examination that she has not produced any documents to prove that during year 1992-1993 she has put the construction in the 'A' schedule property. Therefore, merely on the basis of the pleadings, it cannot be concluded that the plaintiff alone has put up construction in the 'A' schedule property. But admittedly the undivided share in the 'A' schedule property was already settled in her favour. In the 'A' schedule property the entire first floor was settled in favour of the plaintiff and the plaintiff has been given more than the share entitled by her in the 'A' schedule property. Having accepted the above settlement, the plaintiff now cannot claim for partition of 1/3 share in the ground floor of 'A' schedule property. Therefore, this Court is of the view that the plaintiff has already received a share in the 'A' schedule property which is more than her actual entitlement as per law and hence she is debarred from claiming further 1/3 share in the ground floor and she cannot claim further partition in respect of the ground floor and she cannot claim 1/3 share in the 'A' schedule property. Accordingly, this Court hold that the plaintiff is not entitled to any share in the 'A' schedule property.

8. In respect of the 'B' schedule property, it is the contention of the plaintiff that her mother in order to celebrate the marriage of her son Mohan, she

entered into a sale agreement and received a sum of Rs.2,80,000/- as advance. Using the above advance, she has purchased a property, namely 'B' schedule property in the name of said Mohan and the plaintiff. As the sale agreement entered into by the first defendant could not be finalised, the plaintiff settled the advance amount to the vendor. To support the contention that the plaintiff settled the advance to the so called vendor, no evidence, whatsoever is on record. Further the alleged payment towards the purchase of the property in some others name and claiming a right over the property purchased in some others name is not permissible in law. The contention of the plaintiff is nothing but binami in nature. Such contention also cannot be sustainable in law. Admittedly, the 'B' schedule property has been purchased in the name of plaintiff's brother one Mohan and this fact has been admitted by her. The said Mohan also died as a bachelor. The said Mohan died in the year 2001 as seen in Ex.P.9 death certificate. It is also admitted by both sides that he died as a bachelor. Therefore, after his death, the first defendant being the mother, is his class – I legal heir. The 'B' schedule property will go only to the mother and not to other persons. Therefore, the plaintiff's claim for a partition in respect of the 'B' schedule property also has to fail. Hence, the plaintiff is also not entitled to any mesne profits. As far as the 'C' schedule property is concerned, there is no dispute between the parties as to the share. At the most the plaintiff is entitled to a preliminary decree for 1/3 share in respect of the 'C' schedule property alone.

The issues are answered accordingly.

9. In the result, a preliminary decree is passed for dividing the 'C' schedule property in to three equal shares and allot one such share to the plaintiff. In respect of the 'A' and 'B' schedule properties and mesne profits, this suit is dismissed.

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Index : Yes/No

Internet : Yes/No

vrc

N.SATHISH KUMAR, J

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