IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment reserved on : 08.05.2017

Judgment pronounced on : 10.05.2017

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.S.No.513 of 2014

1. P.Suseela
2. P.Gomathi
3. P.Gandhimathy
4. P.Sumathi
5. P.Srinivasan .. Plaintiffs

Versus

P.Pradeesh Kumar .. Defendant

The plaint is filed and numbered as Civil Suit under Order VII Rule 1 of C.P.C. read with Order IV Rule 1 of O.S. Rules, praying for a judgment and decree:

a) by dividing the schedule properties and allotting 1/6 share to each of plaintiff's and the defendant by metes and bounds.
b) Directing the defendant to render true and proper accounts and deposit the mesne profit collected as rent from the tenants from 01.03.2012 to till date.
c) Directing the defendants to pay the costs of the suit.

For Plaintiffs : M/s.S.Ravee Kumar
For Defendant : No Appearance

JUDGMENT

The suit has been filed for the following reliefs:

a) by dividing the schedule properties and allotting 1/6 share to each of plaintiff's and the defendant by metes and bounds.
b) Directing the defendant to render true and proper accounts and deposit the mesne profit collected as rent from the tenants from 01.03.2012 to till date.
c) Directing the defendants to pay the costs of the suit.

2. It is the case of the plaintiff that the first plaintiff is the mother of the plaintiffs 2 to 5 and the defendant. The first plaintiff's husband late P.Panchatcharam purchased the A-schedule property by a registered sale deed, vide Document No.809 of 1976 and B-schedule property in the year 1980 through the sale deed registered as Document No.543 of 1980, on the file of S.R.O., Thiyagaraya Nagar. The said P.Panchatcharam was in possession and enjoyment of the properties along with his family members and he died intestate on 17.09.2001, leaving behind him the plaintiffs and the defendant as his surviving legal heirs.

3. The plaintiffs would state that after the demise of the said P.Panchatcharam, the plaintiffs and the defendant are equally entitled for 1/6 share in the suit properties. It is further averred in the plaint that the defendant is residing in A-schedule property and 3 shops in that property

have been rented out, each for a sum of Rs.5,000/- per month. The first plaintiff and the fourth plaintiff are residing in B-schedule property and one portion therein is rented out to a tenant for a sum of Rs.2,500/- after the demise of P.Panchatcharam. The first plaintiff was collecting rents from the tenants till the year 2011 and spent that money for the welfare of the family. However, from the month of March 2012, the defendant, without any intimation or permission from the plaintiffs, started collecting rents and utilising the same for his own purpose.

4. It is further alleged that the defendant is trying to usurp the entire property without giving any share to others. So, on 28.06.2013, the plaintiffs have issued a legal notice to the defendant calling upon him to render proper account and to partition the properties within a period of 15 days. Despite receiving the notice, the defendant has not chosen either to reply or to come forward for partition. Hence, the suit.

5. The defendant did not choose to contest the suit by filing written statement, hence he was set ex-parte.

6. Taking into consideration the above pleadings, the issue that arises for consideration in this suit is as to whether the plaintiffs have made out a case for grant of partition as prayed for in this suit.

7. Mr.S.Ravee Kumar, learned counsel for the plaintiff would submit that the defendant is trying to take the entire suit property without giving any shares to the other legal heirs, hence they issued a legal notice to the defendant calling upon him to render proper account and to partition the properties. But the the defendant has not chosen either to reply or to come forward for partition. It is further submitted that the first plaintiff examined herself as P.W.1, reiterated the averments made in the plaint and filed the following documents, viz., Exs.P1 to P9.

a) Ex.P1 is the certified copy of sale deed, dated 05.07.1976 registered as Document No.809/1976 before the SRO, T.Nagar.
b) Ex.P2 is the certified copy of sale deed dated 10.04.1980 registered as Document No.543/1980 before the SRO, T.Nagar.
c) Ex.P3 is the print out copy of Death Certificate, dated 24.10.2001.
d) Ex.P4 is the photocopy of the legal heirship certificate dated 18.12.2001.
e) Ex.P5 is the office copy of the legal notice dated 28.06.2013 along with original acknowledgement card.
f) Ex.P6 is the photocopy of the property tax demand card.
g) Ex.P7 is the photocopy of the Electricity Card.
h) Ex.P8 is the photocopy of the water connection card as on 01.04.2010.
i) Ex.P9 is the original Engineer Valuation Certificate dated 10.07.2014.

8. From the above oral and documentary evidence and pleadings, it is clear that the suit schedule properties have been purchased by the deceased P.Panchatcharam, who died intestate. As the petitioners and

defendant are the only legal heirs of the deceased P.Panchatcharam, they are entitled for 1/6 share in the suit properties, but the defendant is trying to usurp the entire property. The plaintiffs have issued a legal notice to the defendant calling upon him to render proper account and to partition the properties within a period of 15 days, but the same did not evoke any response.

9. From the above oral and documentary evidence and pleadings, it is clear that the plaintiffs have proved their claim for the reliefs prayed for in the suit. Accordingly, the preliminary decree is passed and the plaintiffs and the defendant are entitled to 1/6 share each in the suit property by metes and bounds. Consequently, connected applications are closed.

10.05.2017

Index: Yes/No
Internet:Yes/No
pvs

K.KALYANASUNDARAM, J.,

pvs

Pre-delivery judgment in
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