



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2019

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

C.S.No.564 of 2011
and A.Nos.4916 of 2017 & 5638 of 2019

K.Subramaniam

.. Plaintiff

Vs.

1. K.Venkataramanachar

2. K.Raghuraman

3. M/s.Hotel Sri Durga Prasad
rep. by its Managing Partner
K.Venkataramanachar
No.10, Kennet Lane,
Egmore, Chennai-600 008

.. Defendants

* * *

Prayer : Civil Suit filed under Order IV & XXIV of the Original Side Rules read with Order VII Rule 1 and 2 of the Code of Civil Procedure praying to pass a judgment and decree against the defendants

A) Preliminary decree to declare that the plaintiff is entitled to 1/4th share in the undivided suit schedule property.

B) To appoint an Advocate Commissioner for effecting division of the



property by metes and bounds and to allot the specified share to the plaintiff.

WEB COPY C) A final decree for partition and separate possession of the plaintiff's

1/4th share in the undivided suit schedule property.

D) to direct the third defendant to render true and correct statement of account of the income derived from the suit schedule property.

E) to determine future mesne profits under Order XX Rule 12 & 18 of C.P.C.

F) Award costs of the suit.

G) Grant such further or other reliefs.

* * *

For Plaintiff : Mr.A.Swaminathan

For Defendants : Mr.K.Mani for 1 and 3

J U D G M E N T

The suit was laid by the plaintiff seeking for partition and separate possession of his share in the undivided suit schedule property and direction to the third defendant to render true and correct statement of account of the income derived from the suit schedule property.

2. After hearing the learned counsels on either side, this Court passed a preliminary decree dated 10.02.2017 for dividing the suit property into



four equal shares and to allot one such share, i.e., 1/4 share to the plaintiff.

The suit was dismissed as against second and third defendants on the ground that the second defendant has already released his share in favour of the first defendant and as such, he is not entitled to get any share in the property, while no relief was claimed against the third defendant.

3. While passing the preliminary decree, this Court also recorded the submission of the defendants counsel that though the extent of the property was mentioned as 5 Grounds and 91 Sq.ft. in the schedule, it was lesser than the same and that the property shall be divided as per the measurement on the ground of extent, in the final decree.

4. The first defendant filed A.Nos.4916 of 2017 seeking to appoint an Advocate Commissioner to inspect the suit property and allot 3/4th share in the suit property by metes and bounds to his favour and to pass a final decree in the suit.

5. This Court vide order dated 11.10.2017 appointed Mr.A.S.Vijayaraghavan, learned Advocate as Advocate Commissioner, who filed a report before this Court on 18.02.2019 along with Annexures 1, 2, 2A, 3 and 4, of which, Annexure 4 is the plan showing the building and the respective shares earmarked for the first defendant and the plaintiff.



According to the Annexure 4, the plot extent is 10746.13 Sq.ft., of which 3/4th share of the first defendant is 8039.67 Sq.ft., while 1/4th share of the plaintiff is 2706.46 Sq.ft.

6. The plaintiff filed an objection dated 31.07.2019 to the Advocate Commissioner's report and thereafter filed A.No.5638 of 2019 seeking to direct the Advocate Commissioner to inspect the suit schedule property and building with the assistance of the licensed surveyor of Corporation of Chennai and approved chartered Civil Engineer and file a report with accurate details of measurement of building, the feasibility of modification, alteration correction or demolition of the building with actual cost involved in carrying the work.

7. Considering the rival submissions of the learned counsels on either side, this Court vide order dated 03.09.2019 directed the parties to be present before this Court on 03.10.2019, on which date, both the plaintiff and the first defendant appeared before this Court. During mediation process, the only apprehension expressed by the plaintiff is that the first defendant may cause hindrance during the demolition and reconstruction drive that he intends to undertake, for which, the first defendant agreed to extend full co-operation without any disturbance. Thus, they agreed to



divide the property in terms of the report of the Advocate Commissioner and sought a day's time to file a Joint Memo in this regard.

8. On 04.10.2019, a Joint Memo of Compromise was filed by the plaintiff and the first defendant, which was counter-signed by their respective counsels. The terms of the said Joint Memo of Compromise read as follow :

1. The plaintiff and the first defendant in the above suit agreed divide the suit property as per the report of the Advocate Commissioner dated 18.02.2019.

2. The plaintiff agreed to take his 1/4th share in the plan attached to the report of the Advocate Commissioner mentioned in the Schedule and marked BLUE in the sketch filed along with the report as Annexure 4.

3. The first defendant agreed to take his share of 3/4 as per the report of the Commissioner marked as GREEN mentioned in the report.

4. Property allotted to plaintiff K.Subramaniam

All that piece and parcel of land measuring to an extent of 2706.46 sq.ft. (a little more than 1/4th share) in the extreme southern side (with a frontage of 24.5 Feet on the Kennet land side) out of the available extent of 10746.13 sq.ft. comprised in R.S.No.851 & present T.S.No.851/1 (earlier O.S.No.1211 & Collector's certificate No.657) together with 20 rooms in the



southern portion of the existing superstructure (7 rooms in the ground floor [Room No.14 to 20] ; 7 rooms in the first floor [Room No.24 to 26 and 42 to 45] and 6 rooms in the second floor [Room Nos.46 to 51]) situated at old door No.5-A, present Door No.19, Kennet Lane, Egmore, Chennai-600 008, bounded on the

North by the rest of the property (3/4 share) that is being allotted to the first defendant Shri K.Venkataramana Achar ; (length of boundary is 110 feet East-West)

South by : Property belonging to nellai Nadar Paripalana Sangam (length of boundary is 111 feet East-West),

East by : S.No.1526 (length of boundary is 24.5 feet North to South) and

West by : Kennet Lane (length of boundary is 24.5 feet North to South) lying within the Sub-Registration District of Periamet and present Registration District of Central Chennai.

5. Property allotted to First Defendant

K.Venkataramana Achar

All that piece and parcel of land measuring to an extent of 8039.67 sq.ft. in the northern side out of the available extent of 10746.13 sq.ft. (with a frontage of 76.1 Feet on the Kennet Lane side) being the balance available after allotting 2706.46 sq.ft. to Sri K.Subramaniam/Plaintiff) comprised in old R.S.No.851 & present T.S.No.851/1 (earlier O.S.No.1211 &



Collector's certificate No.657) together with 44 rooms in the Northern portion of the existing superstructure (13 rooms in the ground floor [Room No.1 to 13] ; 18 rooms in the first floor [Room No.21 to 23 and 27 to 41] and 13 rooms in the second floor [Room Nos.52 to 64]) situated at old door No.5-A, present Door No.19, Kennet Lane, Egmore, Chennai-600 008, bounded on the

North by : R.S.No.1212 ; (length of boundary is 110 feet East-West)

South by : Rest of the property (1/4th share) that is being allotted to the Plaintiff K.Subramaniam (length of boundary is 110 feet East-West),

East by : S.No.1526 (length of boundary is 69.5 feet North to South) and

West by : Kennet Lane (length of boundary is 76.1 feet North to South) lying within the Sub-Registration District of Periamet and present Registration District of Central Chennai.

6. The plaintiff is entitled to enjoy his share in absolute manner including demolition and reconstruction and the first defendant will have no objection whatsoever and will not interfere and disturb the plaintiff's enjoyment of his share in any manner.

7. The first defendant will handover the vacant possession of the shop portion after vacating the saloon situated in the front portion of the share allotted to the plaintiff.



8. The direction in O.A.No.723 of 2011 ordered on 01.11.2011 will be continued till the shop portion is handed over to the plaintiff."

9. The Joint Memo of Compromise dated 04.10.2019 is taken on record and the final decree is passed in terms of the said Joint Memo of Compromise and the same shall form part of the decree. Accordingly, this suit is decreed in terms of the Joint Memo of Compromise dated 04.10.2019. The parties shall bear their own costs. Consequently, A.Nos.4916 of 2017 and 5638 of 2019 are closed.

Sd./- P.S.N.J
15.10.2019

//Certified to be true copy//
Dated at Madras this the day of 2021.

COURT OFFICER(O.S.)

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