

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 08.02.2017

Pronounced on : 21.02.2017

CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.704 of 2011

1. Amutha
2. Ezhailarasi
3. Kasthuri ... Plaintiffs

vs.

1. C.Mahizan
2. C.Raji ... defendantss

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 defendants.

a) for partition and allotment of 3/5th share to the plaintiffs in the property bearing door No.15/5, Sathyamurthy Street, Choolaimedu, Chennai - 600 094, metes and bounds more fully described in the Schedule to the plaint to the plaintiffs;

b) for permanent injunction restraining the defendantss their legal representatives', agents, successors, administrators, assigns etc from any manner

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disturbing or interfering with the 1st plaintiff's peaceful possession and enjoyment of the portion in the ground floor of the property more fully described in the schedule given under;

c) directing the defendantss to pay to the plaintiffs Rs.7200/- as past mesne profits from June 2011 to July 2011 at Rs.3,600/- per month and future mesne profits as decided by this Hon'ble Court.

d) costs of the suit.

For plaintiffs : Mr.R.Narendran

For defendants : No appearance

J U D G M E N T

This suit is filed for a preliminary decree to divide the suit property into 5 equal shares and allot 3/5 share to the plaintiffs and also permanent injunction and for mesne profits.

2. Brief facts of the plaintiff case is as follows :

The plaintiffs are the sisters of the defendants. They are all children of one Chinnayan and Dhanammal. The defendant's father Chinnayan has acquired the suit property out of his own earnings. He died intestate on 30.05.1998

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leaving behind the plaintiff's mother and the plaintiff and the defendants. The mother of the plaintiffs also died on 13.05.2011. Immediately after the death of the mother of the plaintiffs, the defendants removed the documents relating to the suit property and hid the same. The defendants also tried to dispossess the first plaintiff, who is a widow, from the suit property. Hence, she has filed a complaint. Thereafter, the defendants also broke open the respective portion of the second and third plaintiffs and leased out the same to third parties for a monthly rent of Rs.3000/-. When the plaintiff demanded partition of the suit property, the defendants did not come forward for the same. Hence, the suit.

3. Though notice was served on the defendant, they have not chosen either to appear in person or through counsel. Therefore, they were set ex parte by this Court on 09.04.2013.

4. On the side of the plaintiff, the third plaintiff was examined as P.W.1 and Ex.P.1 to Ex.P.12 were marked.

Exhibits produced on the side of the plaintiff:

S.N o.	Exhi bits	Date	Description
1.	P-1	30.05.1998	The remembrance card of the father of the plaintiffs and defendants
2.	P-2	13.05.2011	The remembrance Card of the mother of the plaintiffs and the defendants
3.	P-3	12.06.2011	Copy of the complaint given by the first plaintiff
4.	P-4	12.06.2011	CSR issued for the complaint
5.	P-5	14.06.2011	Copy of the complaint given by the plaintiff to the Commissioner of Police
6.	P-6	14.06.2011	Copy of the receipt given for the receipt of the complaint
7.	P-7	13.06.2011	Copy of the legal notice sent by the plaintiffs to the defendants
8.	P-8	--	Postal acknowledgement cards
9.	P-9	13.06.2011	Copy of the caveat filed by the defendants
10.	P-10	--	Copy of the family card of the first plaintiff (2005 to 2009)
11.	P-11	--	Property Tax Demand Card 1992 - 1993
12.	P-12	--	Cut-Off Notice issued by CMWSB

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Witnesses examined on the side of the plaintiffs:

P.W.1. - Kasthuri

5. Heard the learned counsel for the plaintiffs and perused the records.

6. The third plaintiff was examined as P.W.1. In her evidence, she has stated that the property belongs to her father Chinnayan. Her father died on 30.05.1998 and thereafter her mother also died on 13.05.2011. Therefore, the plaintiffs, who are daughters of the said Chinnayan, they are entitled to a share in the property. Accordingly, they are entitled to 3/5 share in the suit property. It is also stated by the plaintiff that after the death of their mother, the defendants removed the property documents from the house and they also tried to dispossess the first plaintiff from the suit property and also leased out some of the portions to third parties. The evidence of P.W.1 has not been challenged.

7. Ex.P.1 is a obsequies copy of the father of the plaintiffs. Ex.P.2 is a similar copy of their mother. Ex.P.3 shows that a complaint has been given against the defendants by the first plaintiff to the Choolaimedu Police Station. A receipt given for the complaint is also marked

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as Ex.P.4. A complaint given by the first plaintiff to the Commissioner of Police is marked as Ex.P.5. A receipt given for Ex.P.5 complaint is marked as Ex.P.6. Ex.P.7 is the legal notice dated 13.06.2011 said to have been sent by the plaintiffs to the defendants. Postal Acknowledgment is Ex.P.8. Ex.P.11 the property tax demand card in the name of the mother of the plaintiffs. Ex.P.12 is the Cut-Off Notice issued by the Chennai Metropolitan Water Supply and Sewerage Board in the name of Dhanammal. Ex.P.12 and Ex.P.13 clearly prove that the suit property was owned by the mother of the plaintiffs and their mother was paying the taxes. It is also stated by the plaintiff that all the documents pertaining to the suit property were removed by the defendants immediately after the death of their mother. It is also stated on the side of the plaintiffs that they are in possession of some of portion of the suit property. These facts have not been challenged. No written statement has been filed. From the evidence of P.W.1 and Ex.P.11 and Ex.P.12 it can be safely concluded that the plaintiffs have proved their case and they are entitled to 3/5 share in the suit property and are entitled for a preliminary decree for partition and also for permanent injunction.

8. In the result,

(a) a preliminary decree is passed for division of the suit property into five equal shares and to allot 3/5 share to the plaintiffs.

(b) There will be a permanent injunction restraining the defendants from evicting the plaintiffs till the final decree is passed and the shares have been allotted to them.

(c) With regard to the mesne profits, the same is relegated to a separate enquiry.

(d) Considering the relationship between the parties, the parties shall bear their own cost.

sd/.N.S.K.J

21.02.2017

//Certified to be a true copy//

Dated this the day of 2017

R.s/27.04.2017

COURT OFFICER

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

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