

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 12TH DAY OF OCTOBER 2017

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

A. No.444 of 2017
in
C.S. No.165 of 2008

1. Mrs.Valli Ammal

2. Mrs.Kasiammal

1 & 2 are at No.82, Vaikundapuram,
Nungambakkam,
Chennai - 600 034

3. Mrs.Saradha

No.52, Kasarajapuram Extn.,
Nungambakkam,
Chennai - 600 034

... Plaintiffs

-Versus-

1. Mrs.Ellammal

2. Mr.Venkatesan

1 & 2 are at No.18/1,
Scheme Road, Mahalingapuram,
Chennai -34

3. Mr.Janakiraman

No.82, Vaikundapuram,
Nungambakkam, Chennai -34

4. Mrs.Muniyammal

Yadava Street,
Kuzhipauthandalam & P.O.,
Thirukazhukundram Taluk,
Kancheepuram District.

5. Mrs.Amuda

Kanakkapillai Theru,
Oragathi Village & Post,
Maduranthagam Taluk,
Kanchipuram District

6. Mr.David

No.18, Scheme Road,
Mahalingapuram,
Chennai - 34

7. Pattammal
Kanakkapillai Theru,
Oragathi Village & Post.,
Maduranthagam Taluk,
Kancheepuram District

8. Anjammal
Thoppu Street,
Pathiri Village,
Ongoor P.O.,
Tindivanam Taluk,
Viluppuram District

... Defendants

A. No.444 of 2017:-

Mrs.Muniyammal
Yadava Street,
Kuzhipoonthandalam & P.O.,
Thirukazhukundram,
Kancheepuram District

... Applicant/4th Defendant

-Versus-

1. Mrs.Valli Ammal

2. Mrs.Kasiammal
1 & 2 are at No.82,
Vaikundapuram,
Nungambakkam, Chennai -34

3. Mrs.Saradha
No.52, Kasarajapuram Extn.,
Nungambakkam, Chennai-34... Respondents 1 to 3/Plaintiffs

4. Mrs.Ellammal

5. Mr.Venkatesan
4 & 5 are at No.18/1, Scheme Road,
Mahalingapuram, Chennai -34

6. Mr.Janakiraman (since deceased)

7. Mrs.Amuda
Kanakkapillai Theru,
Oragathi Village & Post,
Maduranthagam Taluk,
Kancheepuram District

8. Mrs.Vanitha(*)
W/o.Late Janakiraman
No.B-403, Arignar Anna Street,
Harbour Colony,
Chennai - 600 081

9. Minor.Deepak Kumar, (*)
 rep by Mother Mrs.Vanitha
 Rep.by mother & guardian Mrs.Vanitha,
 W/o.late Janakiraman
 No.B-403, Arignar Anna Street,
 Harbour Colony,
 Chennai - 600 081 ... Respondents 4 to 9/
 Defendants 1 to 3/4 to 8

(*) Respondents 8 & 9 brought on record
As L.R's of deceased Janakiraman, III Respondent
As per order dt. 2.7.09 in A.No.5377/08)

Application praying that this Hon'ble Court be pleased to pass an additional preliminary decree in the above C.S. allotting 1/4th share in the (schedule property) suit Item No.2, described in the Judges Summons to the applicant/4th defendant abovenamed.

This Application coming on this day before this court for hearing the court made the following order:-

This application has been filed by the 4th defendant in C.S.No.165/2008 seeking a supplementary Preliminary Decree. It is not in dispute that the 4th defendant remained ex-parte during trial and she did not pay any separate Court Fee to seek her share in the suit property. A Preliminary Decree was passed by this Court on 10.07.2008, and the partition and separate possession of the suit schedule property, which reads as follows:

"7. In view of the above, there is no impediment for passing a preliminary decree in favour of the plaintiffs and in favour of 5th defendant. Accordingly, there will be a preliminary decree to the following effect:

a) the plaintiffs 1 to 3 and 5th defendant will be entitled to 1/8 share each in Item No.1 of suit schedule property excluding the extent of 1 ground and 54 Sq.Ft. identified as Door No.18, Scheme Road, Mahalingapuram, Chennai-34.

b) the plaintiffs 1 to 3 and the 5th defendant will also be entitled to 1/8 share each in Item No.2 of the suit schedule property, in view of the fact that the defendants 7 and 8 have agreed for the allotment of their share in Item No.2 of the suit schedule property to the plaintiffs and defendants 1 to 5, which has actually resulted in the enlargement of the share of the plaintiffs and the defendants 1 to 5 from 1/24 to 1/8 each.

c) that the parties do bear their respective costs."

2. In the suit, the shares were never in dispute. The 4th defendant subsequently paid Court Fee and sought for an allotment of her share, an application to that effect was filed in A.No.3937/2015. By an order dated 04.11.2015, this Court dismissed the application with liberty to the applicant/4th defendant to get a share declared by filing an appropriate application to pass a

supplementary Preliminary Decree.

3. Mr. Prakash Goklany, learned counsel appearing for the defendants 1 and 2 would contend that there is no need for a supplementary Preliminary Decree in as much as the shares of the parties have been declared already and the application is misconceived.

4. The fact that the 4th defendant has an equal share along with the plaintiffs and the 5th defendant is not in dispute. In view of the order of this Court dated 04.11.2015 it has become necessary for the 4th defendant to file the present application. It is also stated by the learned counsel appearing on either side from the judgement as well as the Preliminary Decree dated 10.07.2008, it is clear that the share of the 4th defendant though admitted has not been declared. Therefore, there will be a supplementary Preliminary Decree declaring that the 4th defendant will be entitled to 1/8th share in both Item Nos.1 and 2 in the suit properties.

5. It is also stated by the parties pursuant to the Preliminary Decree dated 10.07.2008, an application for a final decree has been filed in A.No.4127/2008 and a final decree has been passed on 18.01.2011 allotting the 1st item of the suit property excluding an extent of 1 ground and 54 square feet identified as Door No.18, Scheme Road,

Mahalingapuram, Chennai-34, which was admittedly sold to the 6th defendant. In view of the said allotments, the applicant now prays that she should be allotted 1/4th share in the 2nd item of the suit properties.

6. Mr. Prakash Goklany, learned counsel appearing for the respondents 4 and 5/defendants 1 and 2 would submit that he has challenged the final decree and the appeal is pending at the stage of condonation of delay. I do not think that I can make allotments at this stage. The shares of the suit schedule properties are admitted. Therefore, there will be a supplementary Preliminary Decree as follows:

"The 4th defendant is declared to be entitled to 1/8th share in both items 1 and 2 of the suit properties".

8. The allotment of the specific property will be subject to the earlier final decree that has been granted by this Court.

Sd/-R.S.M.J
12.10.2017

//Certified to be a true copy//

Dated this the day of 2017

jj 17/01/2018

COURT OFFICER

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