

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 20th DAY OF OCTOBER 2017

THE HON'BLE MR. JUSTICE R.SUBRAMANIAN

C.S. No.1049 of 2005

and

A. Nos.2577 of 2013, 4618 & 4619 of 2017

C.S. No.1049 of 2005:-

1. Tmt.Pushpa,
W/o.late K.E.Hemachala Achary,
2. Tmt.Jeevarekha,
W/o.Vedachalam,
1 & 2 are residing at
Door No.27/10, Pandaram Street,
Vadapalani, Chennai-600 026. ... Plaintiffs

-Versus-

1. K.H.Raviendrran,
2. K.H.Chandra Mohan,
3. Tmt.R.Hamsaveni,
W/o.K.H.Raviendran,
1 to 3 are residing at
Door No.412, Arcot Road,
Vadapalani, Chennai-600 026.
4. Tmt.M.Nirmala,
W/o.Manimaran,
residing at Door No.1061,
Thendral Colony, 1st Street,
Anna Nagar West, Chennai-600 040.
5. K.Nithyanandam,
S/o.Krishnamurthy,
residing at Door No.19,
Thirunagar Annexe,
Kaikkan Kuppam, Valasaravakkam,
Chennai-600 087. ... Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC, praying that this Hon'ble Court be pleased to pass a preliminary decree and

judgment against the defendants herein:

a) for a declaration declaring that the alleged partition deed dated 25.10.1989 (vide Document No.3894/1989 S.R.O. Virugambakkam) between the defendants 1 & 2 is sham and nominal and is not binding on the plaintiffs herein who are not parties hereto;

b) for a declaration declaring that the sale deed dated 25.10.1989 executed by 2nd defendant in favour of 5th defendant (Document No.3901/1989 S.R.O.Virugambakkam) is sham and nominal and is not binding on the plaintiff herein who are not parties thereto;

c) for a declaration declaring that the settlement deeds dated 20.01.2005 and 30.06.2005 executed by 1st defendant in favour of 3rd defendant and dated 09.04.2005 executed by 2nd defendant in favour of 4th defendant in respect of portions of 'A' schedule properties, are sham and nominal and are not binding on the plaintiffs' joint 1/2 share therein as they are not parties thereto;

d) for passing of a preliminary decree for a partition of the plaint schedule properties into 4 equal shares and allot 1/4th share to each of the plaintiffs in each of the items of plaint schedule properties, by metes and bounds and with reference to value thereof and put the plaintiffs in separate possession thereof;

e) to appoint an Advocate Commissioner to divide the suit properties and put the plaintiffs in possession of their 1/4th share respectively therein as per the preliminary decree;

f) directing the defendants herein to render a true and proper accounts in respect of the mesne profits of the suit properties for a period of three years prior to the date of this plaint, and pay 1/4th share thereof to each of the plaintiffs therein;

g) directing the defendants to pay the costs of this suit to the plaintiffs.

A. No.2577 of 2013:-

1. Tmt.Pushpa, (Deceased)
W/o.late K.E.Hemachala Achary,
2. Tmt.Jeevarekha,
W/o.Vedachalam,
1 & 2 are residing at
Door No.27/10, Pandaram Street,
Vadapalani, Chennai-600 026. ... Applicants/Plaintiffs

-Versus-

1. K.H.Raviendrran,
2. K.H.Chandra Mohan,
3. Tmt.R.Hamsaveni,
W/o.K.H.Raviendran,
1 to 3 are residing at
Door No.412, Arcot Road,
Vadapalani, Chennai-600 026.
4. Tmt.M.Nirmala,
W/o.Manimaran,
residing at Door No.1061,
Thendral Colony, 1st Street,
Anna Nagar West,
Chennai-600 040. ... Respondents/Defendants 1 to 4

Application praying that this Hon'ble Court be pleased to pass a final decree in the above suit - C.S. No.1049 of 2005 pursuant to the preliminary decree for partition dated 20.06.2012 passed in the above suit.

A. Nos.4618 & 4619 of 2017:-

Tmt.Jeevarekha,
W/o.Vedachalam,
No.27/10, Pandaram Street,
Vadapalani, Chennai-600 026. ... Applicant/2nd Plaintiff

-Versus-

1. K.H.Raviendrran,
2. K.H.Chandra Mohan,
1 & 2 are residing at No.412,
Arcot Road, Vadapalani,
Chennai-600 026. ... Respondents/Defendants 1 & 2

A. No.4618 of 2017:-

Application praying that this Hon'ble Court be pleased to permit the parties herein to sell the 'B' schedule property to one K.Surendran thro' private negotiation in the above suit.

A. No.4619 of 2017:-

Application praying that this Hon'ble Court be pleased to pass a final decree in A. No.2577 of 2013 in C.S. No.1049 of 2005 in respect of 'A' schedule property as per the commissioner's report and sketch filed in October, 2013 in A. No.2576 of 2013 in the above suit.

This suit along with the applications coming on this day before this court for hearing the court made the following order:-

This application is taken out by the 2nd plaintiff in a suit for partition which ended in grant of preliminary decree in favour of the plaintiff declaring her 1/3rd share.

2. There are two items of properties which are the subject matter of the suit. Insofar as A Schedule property is concerned, the learned Advocate Commissioner has filed a report suggesting a mode of division of the same and the parties have agreed to the said mode of division suggested by the Commissioner. As regards B Schedule property, the Commissioner has reported that the same is indivisible and the same has to be sold in public

auction. It is seen from the affidavit filed in support of the application that the applicant/2nd plaintiff made several attempts for sale of the B Schedule property. Even though a reputed auctioneer was entrusted with the task of auctioning the property, the same did not fructify. In the above said circumstances, the applicant/2nd plaintiff is seeking sale of B schedule property to one K.Surendran through Private Negotiation.

3. The defendants 1 and 2 are present before Court.

4. Insofar as the defendants 3 and 4 are concerned, the documents executed by the defendants 1 and 2 in their favour, have been set aside even in the preliminary decree stage. The 5th defendant is a purchaser of the A schedule property, and even as per the preliminary decree, it has been held that he would be entitled to the share allotted to his vendor viz., the 2nd defendant.

5. The defendants 1 and 2 who are interested in the B Schedule property, have filed separate affidavits expressing their no objection for sale of the 'B' Schedule property to Mr.K.Surendran who had offered to purchase the 'B' Schedule property for a total consideration of Rs.1,98,34,000/- [Rupees One Crore Ninety eight lakhs and Thirty Four Thousand Only] in "as is where is" condition. In view of the above, the application No.4618/2017 is allowed, the 2nd plaintiff and the defendants 1 and 2 are

permitted to sell the B Schedule property to the 3rd party who is the purchaser viz., K.Surendran at No.15, Parthasarathy Street, Saligramam, Chennai-600 093 for a consideration of Rs.1,98,34,000/-, which according to the learned counsel for the applicants, represents the guide line value of the property. The purchaser has submitted a letter seeking four month's time to complete the sale transaction. Accordingly, A.No.4618 is allowed, and four month's time is granted to complete the sale transaction.

A.No.2577/2013

6. This application has been filed by the plaintiffs seeking to passing a final decree. Pursuant to the preliminary decree for partition dated 20.06.2012, the 1st plaintiff viz.,Tmt.Pushpa had died and her share had devolved on the 2nd plaintiff and defendants 1 and 2. Therefore, the 2nd plaintiff and defendants 1 and 2 have got 1/3rd share in the suit properties. It appears from the proceedings that an Advocate Commissioner was appointed, and he has also filed a report and sketch as early as in October 2013. The sketch and plan suggest the mode of division of the suit of A schedule property. The suggestions made by the Commissioner are accepted by the defendants also. The defendants have not come forward to pay the Court fee and seek allotments of their shares also. Hence, accepting the report of the Advocate Commissioner,

the portion marked in stripes in the surveyor's sketch, based on the report of the Advocate Commissioner dated 25.10.2013, is allotted to the plaintiff towards her share. The plaintiff is allotted the portion marked in stripes in the report/plan of the surveyor dated 10.10.2013, which is described as follows in the Commissioner's report. "The portion marked in stripes in the Sketch of the Surveyor measuring to an extent of 2044 Sq.ft. North to Sough on the Eastern Side 54.4 feet Western Side 53 Feet, East to West on the Southern Side 38.10 feet and on the Northern Side 37.3 Feet bounded on the North by 20 Feet Road Thirunagar Annexe, South by property of Balasundara Achary, West by 12 Feet Road Elumalai Street, East by property of Chidambaram at Survey No.137 Valasaravakkam Village, Alwar Thirunagar, Chennai-600 085."

7. Accordingly, there will be a final decree in terms of the above Advocate Commissioner's Report, A.No.2577/2013 is ordered. In view of the order passed in A.No.2577/2013, the Application No.4619/2017 is dismissed as unnecessary.

8. 2nd plaintiff is directed to pay a further sum of Rs.25,000/- [Rupees Twenty Five Thousand Only] to the learned Advocate Commissioner. The same shall be paid

within two weeks from today. The final decree will be drafted only on production of the receipt evidencing such payment to the Advocate Commissioner.

Sd/.R.S.M.J

20.10.2017

//Certified to be a true copy//

Dated this the day of 2018.

COURT OFFICER

jj 10/04/18

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