

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.01.2017

PRONOUNCED ON: 27.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.100 of 2009

Deepika K.

Plaintiff

Vs

1. Janaki Viswanathan
2. Usha
3. K.Elangovan

Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order II Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : M/s.Aiyar and Dolia

For Defendants : Mr.D.Rajasekar-D1
D3-Set Exparte

JUDGEMENT

This civil suit had been filed for declaration that the sale deed executed by the 1st Defendant in favour of the 3rd Defendant, dated 18.11.2004, registered as Document No.2695 of 2004, in the Office of the Sub Registrar of Assurances, Adyar, Chennai, is null and void and for division of the suit property, by metes and bounds and for allotment of 1/6th share to the

Plaintiff and for costs.

2. The suit had been filed with respect to the property, being land and building, at Door No.3 (Old Door No.2), Kamaraj Avenue, First Street, Adyar, Chennai-20, measuring about 1500 sq.ft. and 1000 sq.ft. out of 1500 sq.ft. of land and 900 sq.ft. out of 1350 sq.ft. of constructed portion in the ground floor and first floor.

3. The Plaintiff is the daughter of the 2nd Defendant. The 2nd Defendant was the daughter in law of the 1st Defendant. In effect, the Plaintiff is the grand daughter of the 1st Defendant. The son of the 1st Defendant Dr.Jagdish Sanker died on 26.7.1994, leaving behind the Plaintiff as his daughter, the 1st Defendant as his mother and the 2nd Defendant as his widow as his legal heirs. The suit property had been purchased by the husband of the 1st Defendant late Dr.J.Viswanathan under the sale deed dated 12.10.1970 registered as Document No.1953 of 1970 in the office of Sub Registrar of Assurances, Saidapet. On the death of Dr.J.Viswanathan on 17.12.1982, the suit property devolved into equal one half (1/2) shares on the 2nd Defendant his widow and Dr.Jagdish Sanker, his son. On the death of Dr.Jagdish Sankar, his one half (1/2) share further divided into three shares each for the Plaintiff, the 1st Defendant and the 2nd Defendant. This naturally meant that the Plaintiff became entitled to 1/6th undivided share in the suit property, the 1st Defendant became entitled to 4/6th undivided share in the suit property and the 2nd Defendant became entitled to 1/6th undivided share in the suit property. The 2nd Defendant had re-married one Kumaraswamy on 22.5.1998. The Plaintiff,

who was born on 20.6.1988, continued to stay with the 1st Defendant and at the time institution of the suit, she was aged about 20 years and was studying at the Regional Engineering College, Tiruchy.

4. It is the case of the Plaintiff that before filing the suit, she came to know that the 1st Defendant, without the consent of the Plaintiff and the 2nd Defendant and without obtaining permission of the Court under Section 8 of the Guardian and Wards Act, had executed the sale deed, dated 18.11.2004, registered as Document No.2695 of 2004, in favour of the 3rd Defendant, who is a stranger to the family conveying 50% of her 4/6th undivided share, namely, 500 sq.ft. out of 1000 sq.ft. undivided share of land and 450 sq.ft. out of 900 sq.ft. of undivided share of constructed area in the ground floor and the first floor. Claiming that this sale deed is null and void, as it had been done against the interest of the Plaintiff when she was a minor, this suit had been filed, seeking declaration that the sale deed is null and void and seeking partition of the Plaintiff's 1/6th share in the suit property.

5. The Defendants 1 and 3 had been served on 7.3.2009. With respect to the service of suit summons on the 2nd Defendant, though the Master had granted sufficient time for effecting service, the Plaintiff did not take necessary steps and consequently, the suit was dismissed as against the 2nd Defendant on 23.2.2010. Since the Defendants 1 and 3 did not file any written statement, they were also set exparte by this court on 11.11.2016. The Plaintiff was thereafter directed to lead evidence as against the Defendants 1 and 3. Accordingly, the Plaintiff had examined herself as PW.1 and filed proof affidavit,

reiterating the statements made in the plaint.

6. The Plaintiff had stated that the 3rd Defendant is a stranger to the family and taking advantage of the loneliness of the 1st Defendant, had managed to obtain the sale deed. The Plaintiff had further stated that she was studying at Tiruchy and consequently, did not know about the sale deed. She had further stated that she attained majority on 20.6.2006 and was informed by the 1st Defendant on 16.11.2008 about the sale and consequently, filed the suit immediately on 7.1.2009 within three years of becoming major.

7. At the time of tendering evidence, the Plaintiff was residing at Bangalore subsequent to marriage. The Plaintiff had filed Ex.P1 to Ex.P6. Ex.P1 is the death certificate of Dr.J.Viswanathan and Ex.P2 is her birth certificate. Ex.P3 is the death certificate of her father Dr.Jagdish Sankar. Legal heirship certificate in consequence to the death of her father is Ex.P4. The Plaintiff had also marked a copy of the sale deed dated 18.11.2004, registered as Document No.2695 of 2004 in the Office of the Sub Registrar of Assurances, Adyar, executed by the 1st Defendant in favour of the 3rd Defendant as Ex.P5 and the encumbrance certificate as Ex.P6.

8. The right, title and interest of the parties, particularly, the Plaintiff and the Defendants 1 and 2 cannot be disputed in view of the relationship among themselves and also by themselves with late Dr.J.Viswanathan, the original owner of the property. The 1st Defendant was the widow of Dr.J.Viswanathan and on his death, the 1st Defendant and her son Dr.Jagdish Sankar became entitled to one half (1/2) share in the suit property. Dr.Jagdish

Sankar died on 26.7.1994 and his one half share devolved equally to the Plaintiff, the 1st Defendant and the 2nd Defendant, who was his widow. Consequently, the Plaintiff became entitled to 1/6th undivided share, the 1st Defendant to 4/6th undivided share and the 2nd Defendant to another 1/6th undivided share in the land and the building. The 1st Defendant, who was entitled to undivided 4/6th share, had sold her one half share in both the land and building, measuring about 500 sq.ft. of land and 450 sq.ft. of constructed area in the suit property, to the 3rd Defendant.

9. A perusal of the sale deed marked as Ex.P5 shows that the 1st Defendant had asserted her title to 500 sq.ft out of 1500 sq.ft. of land and 450 sq.ft. out of 1350 sq.ft. of constructed area and as lawful owner had conveyed the said land and building to the 3rd Defendant. The claim of the Plaintiff that since she was a minor, her interest had been overlooked cannot be accepted, since the 1st Defendant had independent right over the land and building. The 1st Defendant had sold her undivided one half share for adequate and valid consideration and consequently the sale deed cannot be stated to be invalid in the eye of law. Consequently, the prayer (a) with respect to declaration that the sale deed is null and void cannot be granted.

10. However, while seeking partition, the Plaintiff can seek her 1/6th share of the land and building and in a suit for partition, the Defendants also being entitled to share in the land and building, the 1st Defendant is also entitled to 3/6th undivided share and the 2nd Defendant to 1/6th undivided share and the 3rd Defendant to 1/6th share. Therefore, only with respect to prayer (b) for

partition, a preliminary decree for partition can be granted. Even before awaiting for application for passing of final decree, an Advocate Commissioner can be appointed to inspect the suit property and divide the 1/6th share of the Plaintiff in the suit property.

11. In the result, this civil suit is dismissed, with respect to the relief (a) relating to declaration that the sale deed is null and void. In respect of the relief (b) relating to partition, the Plaintiff is entitled to 1/6th share in the suit property and this civil suit is decreed as prayed for in respect of relief (b) and accordingly, a preliminary decree for partition in favour of the Plaintiff is granted. Without awaiting for an application for passing of a final decree, for the purpose of inspecting the suit property and to give a proposal for allotment of 1/6th share in the suit property to the Plaintiff, by demarcating the suit property, Ms.R.Gandhimadhi, Advocate, (Reg.No.1197 of 1994) (Cell No.9940384161) is hereby appointed as the Advocate Commissioner and her initial remuneration is fixed at Rs.20,000/- (Rupees Twenty Thousand Only) to be paid by the Plaintiff. No costs.

27.01.2017

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - D.Deepika

2. List of Exhibits Marked on the side of the Plaintiff:-

S.No	Exhibit	Description
1	Ex.P. 1	Original death certificate of Dr.J.Vishwanathan dated 30.12.1982
2	Ex.P. 2	Original birth certificate of the plaintiff dated 9.9.1988
3	Ex.P. 3	Original death certificate of Dr.Jagdish Shankar dated 3.8.1994
4	Ex.P. 4	Original legal heirship certificate of Dr.Jagdish Shankar dated 30.8.1994
5	Ex.P. 5	Original sale deed dated 18.11.2004 executed by the 1 st defendant in favour of the 3 rd defendant registered as Document No.2695 of 2004 in the Office of SRO, Adyar
6	Ex.P. 6	Original encumbrance certificate

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

27.01.2017

Srcm

C.V.KARTHIKEYAN, J.

Srcm

Pre-Delivery Judgement in
CS.No.100 of 2009

27.01.2017

<http://www.judis.nic.in>