

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2017

CORAM

THE HONOURABLE MR.JUSTICE **C.V.KARTHIKEYAN**

C.S. No.185/2010

and

Application No.252 of 2017

1.R.Krishnaveni (Deceased)

2.P.Parthasarathi

3.P.Sriraman

4.P.Vijayalakshmi

5.P.Sulochana

6.P.Rajalakshmi

.. Plaintiffs

Plaintiffs 2 to 6 are brought on record Sole Plaintiff R.Krishnaveni
vide Order dated 28.08.2014 in Application Nos.3351, 3352 &
3353 of 2014

Versus

1.Govindarajulu Naidu

2. M/s.Man and Soil Builders (Pvt.) Ltd.
Represented by its Managing Director,
Mr.Haneefa.

.. Defendants

Prayer

Plaint filed under Order IV Rule 1 Read with Order VII Rule 1 of Civil
Procedure Code and number as C.S.No.185 of 2010 praying for
judgement decree :-

(a) preliminary decree declaring that the plaintiffs are entitled to 1/2
share in the suit property and to pass final decree in terms of the
preliminary decree directing division of the suit property by appointing an
advocate Commissioner to divide the suit property into 2 equal shares
by metes and bounds and to allot one such share to the plaintiff's in
possession thereof.

(b) for a permanent injunction restraining the defendants, their men,

servants, agents or nay person claiming through them from in any manner dealing with the suit property either by creating third party rights / Interest / encumbrances or by altering the nature of the suit schedule property and

(c) for costs of the suit.

For Plaintiffs : Mr.D.Rajagopal

For Defendants : Mr.J.R.K.Bhavanantham for D1
Mr.K.Sridhar for D2

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JUDGMENT

The suit has been filed for a preliminary decree seeking partition and separate possession and allotment of half share in the suit property to the plaintiff and for a permanent injunction restraining the defendants from in any manner dealing with the suit property. The suit property has described in the Plaint is situated at Plot No.47, Old Door No.6, New Door No.18, V.O.C. Colony, 1st Street, Aminjikarai, Chennai – 600 029 measuring to an extent of 3600 sq. ft. The plaintiff and the first defendant are sisters and brother. Consequently, the first defendant was also entitled to one half of the share. The second defendant is a company incorporated under the provisions of the Companies Act, 1956 and it has been stated that the first defendant and the second defendant had entered into an agreement for development of the said property and consequently in the suit the relief of injunction has also been sought

from dealing with the property.

2. The first defendant had filed his written statement accepting that the original plaintiff is his sister and that the property was purchased in the name of their father. He claimed that he had contributed entire sale consideration and for construction of the building. It had been stated that the first defendant had decided in the year 2009 to develop the property and consequently entered into a joint venture agreement with the second defendant and the second defendant had also commenced construction. The suit had been filed at the time when the old building was demolished and construction had commenced.

3. The second defendant had also filed a written statement stating that they entered into an agreement with the first defendant and they had demolished the old building in April 2009 and obtained planning permission from Corporation of Chennai and commenced construction of flats. They had also entered into an agreement with four prospective purchasers. They further stated that they had completed about 70% of construction when they have received the suit summons.

4. Upon hearing the learned counsel on both sides, this Court, by Order dated 31.03.2016, had framed the following issues:-

1. Whether the suit property is the absolute property of late

N.Ramasamy Naidu?

2. Whether the 1st defendant is prohibited under Section 4 (2) of the Benami Transactions (Prohibition) Act 1988 in claiming right in the suit property as late N.Ramasamy Naidu was only a Benamidar?
3. Whether the agreement entered into between the defendants 1 and 2 without the consent of the plaintiffs by binds the plaintiffs?
4. Whether the construction by the 2nd defendant in the suit property is binding on the plaintiffs and dis entitles the plaintiffs claiming share in the suit property?
5. Whether there was an oral partition as pleaded by the defendants between the plaintiffs and the 1st defendant?
6. Whether the suit for partition is maintainable?
7. Whether the suit for partition is affected by ouster on account of his long continuous and uninterrupted possession and enjoyment of the suit property for several decades in open and hostile to the knowledge of the plaintiff?
8. Whether the landed properties in Velankanni Village, Nannilam Taluk owned by their mother in lie of the suit property was allotted to the plaintiff or not?

9. Whether the suit is not maintainable on the ground of partial partition?

10. Whether the 2nd defendant is a bona fide developer of the property without knowledge of any alleged defect in the title to the property?

11. Whether the suit is bad for non joinder of necessary parties?

12. Whether the plaintiffs are entitled to get a judgment and decree as prayed for?

13. To what other relief, the parties are entitled?

5. In the meanwhile, the plaintiff also died and consequently, by Order dated 28.08.2014 in Application No.3351, 3352, 3353 of 2014, the legal representatives of the plaintiff were brought on record. During trial, the third plaintiff, who had been brought on record as Legal representatives of the original plaintiff and who was the brother of the newly added second, fourth, fifth and sixth plaintiffs filed proof affidavit on his behalf and on behalf of other plaintiffs. He also marked Ex.P1, which is Sale deed, dated 07.07.1958 executed in favour of N.Ramasamy Naidu, father of the plaintiff, the legal notice dated 02.02.2010 as Ex .P.2, a public notice dated 04.02.2010 as Ex.P3. Encumbrance Certificate as Ex.P4, Ex.P5 and P6 as returned cover of

legal notices and postal acknowledgment receipts of legal notices.

6. At this juncture, the plaintiffs and the defendants entered into a memo of compromise and accordingly Application No.252 of 2017 had been filed before this Court, seeking to record the memo of compromise. The memo of compromise had also been produced before this Court.

7. On 19.01.2017, the learned counsel for the plaintiff and the learned counsels for the first, second defendants appeared and the third plaintiff P.Sriraman and the fourth plaintiff P.Vijayalakshmi also appeared. The compromise memo signed by the third plaintiff, first defendant and by the second defendant was also produced in Court. The third plaintiff had signed on behalf of other plaintiffs in his capacity as Power of Attorney agent. The first defendant was also present. The first defendant being an aged person, was also heard and thereafter his presence on subsequent hearing date viz, today, 23.01.2017, was dispensed with.

8. This Court wanted the learned counsel for the plaintiff to produce the Power of Attorney Agent giving power to the third plaintiff to enter into the memo of compromise. On perusal, it was seen that it was not specifically given in the Power of Attorney that the third plaintiff can enter into a compromise with respect to the suit with the defendants.

Consequently, this Court had directed that the plaintiffs should be present in this Court. Accordingly, the fourth plaintiff P.Vijayalakshmi, fifth plaintiff P.Sulochana, and sixth plaintiff P.Rajalakshmi are present. The third plaintiff P.Sriraman in his individual capacity and as Power Agent of the other plaintiffs is also present. The second plaintiff P.Parthasarathy is said to be in Dubai and a copy of the Power of Attorney given by him to the third plaintiff is also produced. In this Power of Attorney, the third plaintiff has been granted the power to enter into a compromise. The parties, who are present viz., third plaintiff P.Sriraman, fourth plaintiff P.Vijayalakshmi, fifth plaintiff P.Sulochana and sixth plaintiff P.Rajalakshmi were requested to sign in the memo of compromise at each page giving today's date, i.e., 23.01.2017.

9. Accordingly in the presence of their learned counsel and in the presence of the learned counsels for the first defendant and second defendant, they affixed their signatures in each and every page. They were also examined personally and they accepted to the fact that the memo of compromise was entered by them and that they knew the terms thereof.

10. In page 12 of the compromise memo at Clause 14, it has been stated as follows :

14) In view of the above compromise entered into between

the plaintiff's and the defendant No.1 and defendant No.2, the plaintiff's give up their claim made by them in the above suit and accept the above flats along with undivided share (UDS) in land, car parking spaces and rights in common areas allotted to them towards their share in the suit property.

11. Accordingly, the suit is decreed in terms of the compromise memo. The compromise memo dated 09.12.2016 and signed by third plaintiff P. Sriraman, fourth plaintiff P.Vijayalakshmi, fifth plaintiff P.Sulochana, and sixth plaintiff P.Rajalakshmi in the open court today 23.01.2017, containing the rough sketch of the ground floor, first floor and second floor construction and also the copy of the general Power of Attorney dated 07.10.2014 in favour of the third plaintiff, executed by the second, fourth, fifth and sixth plaintiffs along with the copy of the Power of Attorney executed by the second plaintiff at Dubai on 27.10.2016 in favour of the third plaintiff must also be annexed to the decree passed by this Court. Accordingly, the Application No.252 of 2017 is allowed and the compromise is recorded in terms thereof. The suit in C.S.No.185 of 2010 is decreed in terms of the compromise decree. Compromise decree and its annexures mentioned above shall form part of the decree. No costs.

23.01.2017

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To
The Sub Assistant Registrar,

Original Side,
High Court, Madras.

C.V.KARTHIKEYAN, J.

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and
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