

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 31.08.2017

PRONOUNCED ON: 19.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.743 of 2010

1. R.V.Muthukrishnan (died)
2. M.Nirmala
3. P.Deebalakshmi
4. R.M.Rubesh
5. R.M.Sreeram
6. R.M.Mahalakshmi

Plaintiffs

Vs

1. G.B.Shreekanth
2. G.B.Nirmakanth
3. G.B.Prakash
4. G.B.Hema Raju
5. R.V.Badrinarayanan
6. R.V.Gopalakrishnan
7. R.V.Chaturadevi
8. R.V.Yajura Devi
9. Bharathi
10. Susheela
11. O.G.Venkateswaralu
12. Anantha Lakshmi
13. Nemakumari
14. Sampathkumar (died)
15. Santharam
16. Krishna
17. Bhrarhi
18. Devika
19. J.S.Lalitha
20. J.S.Parthesh

Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules.

For Plaintiffs : Mr.S.L.Venkatesan

For Defendants : Mr.K.Raja-DD1 to 4
Mr.M.Karunanidhi-DD5 to 9, 14 to 20
Mr.D.Yuvarani-D13
Mr.V.Yoga Kannan-D10

JUDGEMENT

This civil suit has been filed, to pass a judgement and decree, against the Defendants, granting a preliminary decree for partition of the suit property by metes and bounds and allot 1/8th share in the suit property to the Plaintiffs.

2. The suit was originally filed by the sole Plaintiff, R.V.Muthukrishnan, who died during the pendency of the suit and his legal representatives had been brought on record as the Plaintiffs 2 to 6. The suit was originally filed against thirteen Defendants and during the pendency of the suit, the Defendants 10 and 14 died and their legal representatives were brought on record as the Defendants 14 to 20.

3. It has been stated in the plaint that the father of the 1st Plaintiff, R.Varadha Ramanujam had left 21,896 sq.ft of land and superstructure, as coparcenaries property, and he died on 24.5.1966, leaving the Plaintiffs and the Defendants as his legal heirs.. The said property was partitioned on 27.03.1976 among the male members and on 20.7.1979, the female legal heirs had executed a release deed in favour of the 1st Plaintiff. The father of the 1st Plaintiff had also owned land and superstructure mentioned in the schedule to the plaint, measuring an extent of 6720 sq.ft. It has been stated that the Plaintiffs are entitled for 1/8th share in the suit property and that the Defendants are in occupation of excess of their respective share in the suit property.

4. It has further been stated that the 1st Plaintiff had sent a legal notice dated 29.6.2010 to all the Defendants for partition of the suit property and he was not in a position to hand over the documents to his relatives or his lawyer to defend his case till 28.6.2010 and on 28.6.2010 he insisted his family members to trace his LIC agent file records and other original records, including the release deed executed in favour of the 1st Plaintiff in respect of the shares of the female members. It has been stated that the suit property was the self acquired property of late R.Varadha Ramanujam, having purchased the same under the registered sale deed dated 29.4.1957. The said R.Varadha Ramanujam died on 24.5.1966 intestate leaving nine legal heirs, namely, (1) Kottama (wife), died in 1994, (2) Suseela, daughter, (3) Yuvatha, daughter, died in 2007, (4) R.V.Muthu Krishnan, son, (5) B.Kasthuri, daughter, (6) Neema Kumari, daughter, (7) R.V.Venkatanarayanan, son, (died), (8) R.V.Badri Narayanan, son and (9) R.V.Gopala Krishnan, son. Even after service of notice on 29.6.2010 for partition of his 1/8th share in the suit property, there was no response. Hence, this civil suit has been filed for partition and separate possession of his 1/8th share in the suit property.

5. In the written statement filed by the Defendants 14 to 18, it has been stated that in respect of suit property, there was a partition already taken place by metes and bounds, as per the preliminary decree passed in CS.No.301 of 2010 and that they have no objection for confirmation of the partition that had already taken place. However, a memo dated 23.02.2017 had been filed by the Defendants 5 to 9 and 14 to 18, stating that though in their written statement, they had stated that they have no objection for

confirmation of the partition that had already taken place, in order to avoid further complications and delay in the process of partitioning the suit property, these Defendants have no objections in granting 1/8th share to the Plaintiffs as prayed for in the present suit and in granting a preliminary decree accordingly.

6. For non filing of the written statement by the Defendants 1 to 4 and 10 to 13, in spite of several opportunities, they were set exparte. In the exparte evidence, the deceased 1st Plaintiff was examined as PW.1. After his death, the 3rd Plaintiff, Deepalakshmi was examined as PW.1 and Ex.P1 to Ex.P3 were marked. On the side of the Defendants, 6th Defendant, R.V.Gopalakrishnan, was examined as DW.1. Ex.P1 is the original sale deed dated 29.4.1957. Ex.P2 is the copy of the legal notice and Ex.P3 is the acknowledgement cards.

7. Considering the oral and documentary evidence and in view of the no objection on the part of the contesting Defendants, viz. Defendants 5 to 9 and 14 to 18, this civil suit is decreed as prayed for and the Plaintiffs are entitled to 1/8th share in the suit property and accordingly, a preliminary decree for partition is granted. No costs.

19.09.2017

Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
Srcm

Note to Office:-

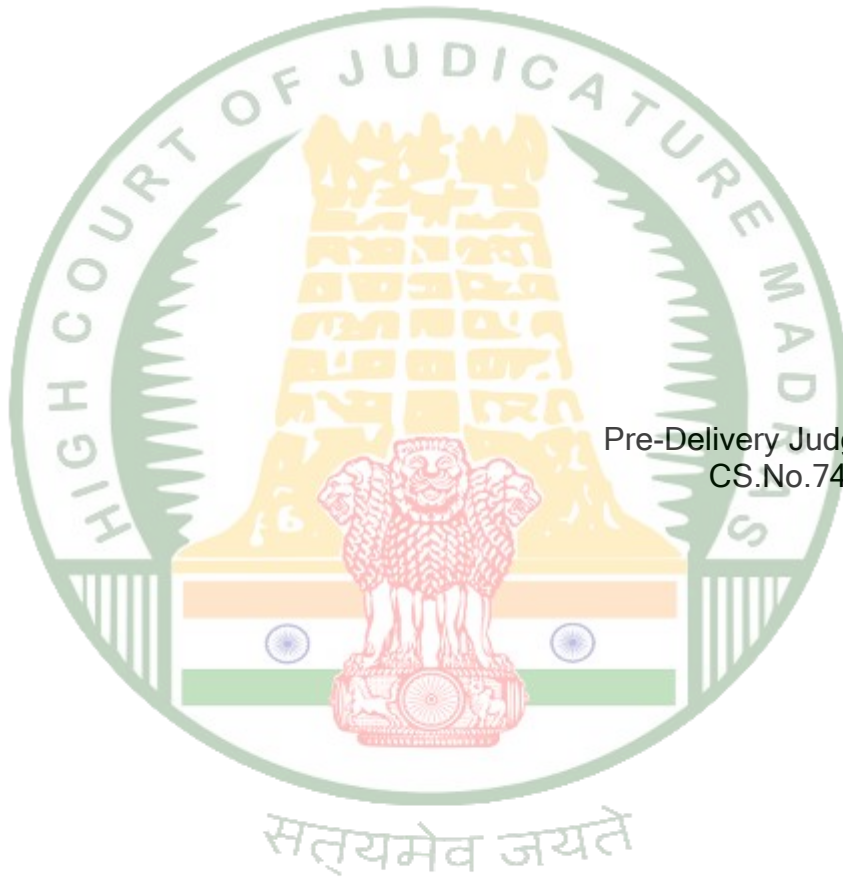
Issue on 21.09.2017

To:

1. The Record Keeper, VR Section, High Court, Madras



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Pre-Delivery Judgement in
CS.No.743 of 2010

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19.09.2017