

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 10.01.2017

Judgment pronounced on : 27.01.2017

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No.870 of 2010
& C.S.No.967 of 2010

C.Manjula .. Plaintiff in C.S.No.870 of 2010 and
defendant in C.S.No.967 of 2010

Versus

1. C.Sathyannarayana Rao .. First defendant in C.S.No.870 of 2010
and plaintiff in C.S.No.967 of 2010

2. R.Devandran .. Second Defendant in C.S.No.870 of 2010

Civil Suit No.870 of 2010 had been filed under order IV Rule 1 of Original Side Rules r/w Order VII Rule 1 of Civil Procedure Code, praying for a judgment and decree:

- a) partition and separate possession of plaintiff's half share in the schedule property and deliver to her share in the schedule property;
- b) costs of the above suit.

Civil Suit No.967 of 2010 had been filed under Order IV Rule 1 of OS Rules read with Order VII Rule 1 of CPC, praying for a judgment and decree

- a) for partition of the suit property viz., land, building and premises bearing Door No.3, Thangavelu Gramani Street, now known as Gokulam Colony, Chennai - 600 0017, comprised in Town Survey No.4739,

Resurvey No.35, Plot No.24, measuring 1 ground 39 sq.ft. i.e.2439 sq.ft. And the building thereon, admeasuring an extent of about 1400 sq.ft. Morefully described in the schedule hereunder by metes and bounds and allot $\frac{1}{2}$ share to the plaintiff and consequently, for that purpose that an Advocate Commissioner be appointed to divide the suit property, morefully described in the schedule hereunder, by metes and bounds and deliver separate possession of the $\frac{1}{2}$ share to the plaintiff.

- b) directing the defendant to pay the past mesne profit inclusive of the loss of income caused by the defendant, monies spent by the plaintiff in improving the suit property and maintaining the same to be ascertained by this Court.
- c) directing the defendant to pay the costs of the suit.

Schedule

All that piece of parcel of land together with buildings there on, now bearing door No.3 Gokulam Colony, T.Nagar, Chennai - 600 017, bearing patta C.A.No.1467/02, 03 (dated 31.03.2003) and bearing plot No.24, measuring about 2439 sq.ft. bounded on the

North by : Thankavelu Gramani Street;

East by : Plot No.25;

South by : Plot No.13; and

West by : Plot Nos.23.

The Registration District of Chennai, and Sub-Registration District of T.Nagar, Chennai - 600 017.

For Plaintiff in C.S.No.870 of 2010 and

defendant in C.S.No.967 of 2010 : M/s.Sampathkumar & Associates

For Plaintiff in C.S.No.967 of 2010 and

1st defendant in C.S.No.870 of 2010 : Mr.V.Ragavachari

For second defendant in C.S.No.870 of 2010 : Mr.V.V.Giridhar

JUDGMENT

C.S.No.870 of 2010 has been filed seeking partition and separate possession of the plaintiff's $\frac{1}{2}$ share in the suit schedule property and to deliver her share.

2. C.S.No.967 of 2010 has also been filed for partition by metes and bounds and allotment of $\frac{1}{2}$ share to the plaintiff in the suit schedule property and also to pay past mesne profits, which has to be ascertained by the Court.

3. The plaintiff in C.S.No.870 of 2010 and the plaintiff in C.S.No.967 of 2010 are sister and brother, respectively. They have filed the suit against each other for the very same relief, seeking partition and separate possession of their $\frac{1}{2}$ share in the very same suit property. In C.S.No.870 of 2010, the tenant in the suit property has been impleaded as second defendant.

4. The suit property is the house and premises bearing Door No.7/5, Thangavelu Gramani Street, Gokulam Colony, T-Nagar, Chennai - 600 017, measuring 1 ground and 39 sq.ft., viz., 2439 sq.ft.

5. **The plaintiff in C.S.No.870 of 2010:** The plaintiff and the first defendant were son and daughter of C.Chandriah Chetty. Originally one Lakkuru Venkataratanamma was the sole and absolute owner of the suit schedule property. She executed a settlement deed dated 07.04.1959 in Document No.894/1959, by which she retained life estate and bequeathed the property to her daughter C.Parvathavardhinamma and thereafter to the children of the said C.Parvathavardhinamma. Lakkuru Venkataratanamma died on 16.10.1976. C.Parvathavardhinamma died on 13.03.2000. Her husband C.Chandriah Chetty died on 18.09.1996. The plaintiff and the first defendant are her legal heirs. Consequently, the plaintiff and the first defendant became entitled to $\frac{1}{2}$ undivided share in the land and building of the suit schedule property.

6. The plaintiff's further averments are with respect to the construction of first floor letting out the property to tenant and the consequent suits with respect to injunction. However, the fact that the plaintiff and the first defendant are daughter and son of late Smt.C.Parvathavardhinamma and that each were entitled to $\frac{1}{2}$ share, was not disputed.

7. The plaint in C.S.No.976 of 2010: As stated in the plaint in C.S. No.870 of 2010, the plaintiff and the defendant are brother and sister. The plaintiff herein was the first defendant in C.S.No.870 of 2010. The title to the suit property was originally with late L.Venkataratanamma, who had purchased the same under sale deed dated 29.10.1958, registered as Document No.1863 of 1958, in the Office of the Sub-Registrar, T-Nagar. Thereafter, she settled the property in favour of her daughter C.Parvathavardhinamma giving her life interest and ownership, by settlement deed dated 07.04.1959 registered as Document No.894 of 1959 in the office of the Sub Registrar T-Nagar. The said L.Venkataratanamma died on 16.10.1976 and C.Parvathavardhinamma died on 13.03.2000. Thereafter, the suit property devolved on the plaintiff and the defendant, who was the plaintiff in C.S.No.870 of 2010. There are also similar averments in this plaint with respect to dispute between the plaintiff and the defendant, plaintiff and the tenant, consequential police complaints and Civil Suits. However, the fact that the plaintiff was entitled to $\frac{1}{2}$ undivided share and the defendant was also entitled to $\frac{1}{2}$ undivided share was not disputed.

8. **Written Statement in C.S.No.969 of 2010.** The defendant had not disputed the relationship between the parties and the manner in which the suit property devolved in the defendant and on the plaintiff. It had been stated that the defendant had already filed C.S.No.870 of 2010 claiming $\frac{1}{2}$ share. Once again, the disputes regarding tenancy, other issues between the parties, and consequential Civil Suits and police complaints were reiterated. However, the fundamental fact that both the parties are entitled to $\frac{1}{2}$ share has been reiterated.

9. When the matter came up for final hearing and for recording of evidence, the learned counsel for the plaintiff in C.S.No.870 of 2010, who also appeared for the defendant in C.S.No.967 of 2010, reported that he had no instructions from his client. This Court, therefore requested the office to issue notice to the plaintiff in C.S.No.870 of 2010 / defendant in C.S.No.967 of 2010. There being no representation, the name of the said party was also printed in the cause list.

10. However, the learned counsel who appeared for the first

defendant in C.S.No.870 of 2010 / plaintiff in C.S.No.967 of 2010 stated that since the share which devolved upon each of the two parties, has been determined as $\frac{1}{2}$ share and moreover, the suits being one primarily between a brother and sister over the same suit property, the Court can straight away pass a preliminary decree for $\frac{1}{2}$ share. On verification of the schedule of the properties, it was found that there was a slight difference in the area of the property as mentioned in C.S.No.870 of 2010 and C.S.No.967 of 2010. This was required to be clarified and the learned counsel for the plaintiff in C.S.No.967 of 2010 has reiterated that the measurement as given in C.S.No.967 of 2010 is the correct measurement and the boundaries therein also are correct. There are no disputes with respect to the identity of the property. Accordingly, eventhough parties did not let in evidence, taking into account the pleadings admitting that each one of them have an undivided $\frac{1}{2}$ share in the suit property, preliminary decree is passed in both the suits. Consequently, the following preliminary decree is passed in C.S.No.870 of 2010 and C.S.No.967 of 2010.

- 1) A preliminary decree is granted to the plaintiff in C.S.No.870 of 2010 / defendant in C.S.No.967 of 2010, that she is entitled to undivided $\frac{1}{2}$ share in the suit property.

- 2) A preliminary decree is passed that the first defendant in C.S.No.870 of 2010 / Plaintiff in C.S.No.967 of 2010 is entitled to $\frac{1}{2}$ share in the suit property.
 - 3) Mr.T.Rajkumar, Advocate (Enl.No.955/2009, Mobile No.9751656467, 7358761775), is appointed as Advocate Commissioner to inspect the property, formulate a plan for dividing the property into equal $\frac{1}{2}$ shares and file a report with respect to the allotment of $\frac{1}{2}$ share each of the parties mentioned above. The initial remuneration of the Advocate Commissioner is fixed at Rs.20,000/- to be paid in equal shares of Rs.10,000/- each by the plaintiff in C.S.No.870/2010 & plaintiff in C.S.No.967/2010.
 - 4) On filing of the said report, the parties viz., plaintiff in C.S.No.870/2010 & plaintiff in C.S.No.967/2010 are both entitled to apply for final decree for allotment in respect of share.
 - 5) Since the parties are brother and sister, there shall be no order as to costs.
- C.S.No.870 of 2010 is dismissed as against the second defendant, against whom no relief is sought. The preliminary decree is passed accordingly in C.S.No.870/2010 & C.S.No.967 of 2010.

27.01.2017

Index: Yes/No
Internet:Yes/No
pvs

C.V.Karthikeyan, J.,
pvs

Pre-Delivery Judgment made in
C.S.No.870 of 2010
& C.S.No.967 of 2010

27.01.2017

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