

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.01.2017

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.800 of 2012

1.P.Senkeni

2.B.Sivakami

3.R.Jayalakshmi

.. Plaintiffs

Versus

1.P.Subramani

2.P.Somasundaram

..Defendants

The plaint is filed and numbered as Civil Suit under Order IV Rule 1 of O.S. Rules r/w Order VII, Rule 1 of CPC, praying for a judgment and decree:

- a) Declaring that the 1st plaintiff is owner of the 'B' schedule property, 2nd plaintiff is owner of the 'C' schedule property, 3rd plaintiff is owner of the 'D' schedule property;
- b) Restraining the defendants by way of permanent injunction or their subordinates or agents in any manner interfering with the peaceful enjoyment of suit property;
- c) Directing the defendants to hand over the actual and physical possession of the B, C and D schedule properties to the plaintiffs within the time stipulated by this Hon'ble Court;
- d) Directing the Defendants to pay cost of the suit.

For Plaintiffs : Sundaravadhanan

For Defendants : Ex-parte

JUDGMENT

The plaint is filed and numbered as Civil Suit under Order IV Rule 1 of O.S. Rules r/w Order VII, Rule 1 of CPC, praying for a judgment and decree for declaring the plaintiffs as owner of the suit schedule property; restraining the defendants by way of permanent injunction in any manner interfering with the peaceful enjoyment of suit property; directing the defendants to hand over the actual and physical possession of the suit schedule properties to the plaintiffs and to direct the defendants to pay cost of the suit.

2.The brief facts of the case is as follows:

The plaintiffs and the defendants are brothers and sisters and the suit properties were purchased by Late Pakirisami Nattar, the father of the plaintiffs and defendants. Both parents died intestate. As the plaintiffs and defendants were residing in the suit property jointly, in the month of October 2010, for the interest of the family, there was a partition between the plaintiffs and defendants and partition deed was also registered in document No.2328 of 2001 on 16.09.2011. Subsequent to the partition, the shares were allotted to the parties. While so, there were two thatched huts

in the suit schedule property, which were in possession of the defendants was agreed to be removed and handover the possession of the property to plaintiffs as per the partition deed, but the defendants failed to hand over the possession till date. Therefore, the plaintiffs issued a legal notice on 04.08.2012. Even after receiving the legal notice, the defendants had not handed over the property. Hence, the plaintiffs filed the present suit for declaration to declare them as the owners of the property as per the partition deed and also recovery of possession and also consequential claim of relief.

3. When the matter was posted for recording evidence, the defendants were remained ex-parte. The third plaintiff was examined as PW1 and Exhibits P1 to P4 were marked. Ex.P.1 is the certified copy of the sale deed; Ex.P.2 is the certified copy of the partition deed; Ex.P.3 is the photocopy of the legal notice sent by the plaintiff's counsel to the defendants and Ex.P.4 is the acknowledgement cards to prove the receipt of the legal notice. They had spoken about the nature of the property and partition entered and received between them on 16.09.2011. The evidence of PW1 clearly indicate that though the defendants were jointly in possession of property prior to partition deed registered between them, they continued to be in possession of the property without handing over the property allotted to the plaintiffs.

N.SATHISH KUMAR, J.,
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4.Chief examination of PW1 remains unchallenged. Therefore, the same can be taken as proved. The plaintiffs established the title of the suit property by way of registered partition, already held.

5.In the result, there shall be a judgment and decree declaring the that the plaintiffs are entitled for the rights in the suit scheduled property and also for recovery of possession as prayed for. The plaintiffs are also entitled to the cost of the suit.

09.01.2017

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Index:Yes/No
Internet:Yes/No
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