

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 15.02.2017

Delivered on : 21.02.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Civil Suit No.849 of 2013

G.Subba Reddy

...Plaintiff

vs.

1. Mrs.P.Rajeswari

2. Mrs.J.Indirani

...Defendants

Prayer:- Complaint filed under Order IV Rule 1 of the original side rules r/w Order VII Rule 1 of the Code of Civil Procedure

i) Pass a preliminary decree of partition by allotting and dividing 4/6th share of the plaintiff in the undivided share i.e. 3680 sq.t in the land measuring of an extent of 2 grounds 720 sq.ft (as per document) and 2 Grounds 301 sq.ft (as per patta) i.e. 5,520 sq.ft., situated at Door No.11/2, Perambur High Road, Perambur, Chennai and comprised in O.S.No.48, Old R.S.No.327, C.C.No.2047 to 2053 and 2907, present R.S.No.327/5 together with hut, which is morefully described in the schedule hereunder and a separate portion and possession of the 4/6th share of the plaintiff in the schedule property mentioned hereunder.

ii) Directing the defendants to pay the plaintiff the cost of the suit.

For Plaintiff : Mr.A.Govardhan Rao

For D2 : Mr.V.Rajaram

D1 : Set ex-parte

JUDGMENT

The suit has filed for passing a preliminary decree of partition by allotting and dividing 4/6 share to the plaintiff in the suit property.

2. The brief facts of the plaintiff's case is as follows:-

Originally, the suit property was purchased by Mrs.Saraswathy Ammal in the year 1963. The said Saraswathy Ammal died on 09.09.1993, leaving behind her four daughters and two sons namely Mrs.Varalakshmi, Mrs.Sulochana, Mrs.P.Rajeswari, Mrs.J.Indirani, Mr.V.S.Murali and Mr.S.Narayana Reddy. The plaintiff is the husband of Mrs.Varalakshmi, who is one of the daughters of Mrs.Saraswathy Ammal. After the death of Mrs.Saraswathy Ammal, the plaintiff's wife has 1/6 share in the suit property. Mrs.Saraswathy Ammal's husband is also pre-deceased her on 10.06.1992. The plaintiff's wife sister one Mrs.Sulochana, and his brother Mr.V.S.Murali and Mr.S.Narayana Reddy have released their respective shares in the suit property in favour of plaintiff's wife Mrs.Varalakshmi. Therefore, Mrs.Varalakshmi became entitled to 4/6 share including her share in the suit property. The plaintiff's wife Mrs.Varalakshmi has executed a Settlement Deed in respect of 4/6 share in favour of plaintiff on 12.06.2013. Therefore, the plaintiff has become the absolute owner of the property and

he has also requested the defendants for partition, but the same not fructified any result. Hence the suit.

3. The 2nd defendant filed the written statement denying the allegations of the plaintiff and submitted that the plaintiff has not valued the suit property and proper Court fee has not been paid. The 2nd defendant being in joint possession, she is also entitled to her 1/6 share in the suit property. The 1st defendant remained ex-parte.

4. Based on the above pleadings the following issues are framed as follows:-

"1. Whether the plaintiff is entitled to a preliminary decree for partition of the suit property?

2. Whether the plaintiff is entitled to 4/6 shares in the suit property?

3. Whether the suit is properly valued by the plaintiff?

4. Relief and Cost?"

5. The learned counsel appearing for the plaintiff submitted that under Ex.P6 to Ex.P8 the plaintiff's wife became owner of 3/6 shares, besides she had also 1/6 share by her succession, thereby she became entitled to 4/6 shares in the entire suit property. The same has been

settled in favour of the plaintiff. These facts are not in dispute. He also submitted that the plaintiff is entitled to partition as prayed for. Whereas it is the contention of the learned counsel for the 2nd defendant that since the Court fee has not been paid and the property has not been assessed to a true value, the 2nd defendant is also entitled to 1/6 share in the suit property.

6. In the light of the above observations, this Court framed the following issues:

- "1. Whether the plaintiff is entitled to a preliminary decree for partition of the suit property?
2. Whether the plaintiff is entitled to 4/6 shares in the suit property?
3. Whether the suit is properly valued by the plaintiff?
4. Relief and Cost?"

7. On perusal of the above pleadings, the relationship between the parties is not in dispute. The property originally belonged to Mrs.Saraswathy Ammal by way of purchase under Ex.P1-Sale Deed in the year 1963. Ex.P2 is the original patta. The death certificate of father of the defendants Mr.V.Sundarama Reddy and Mrs.Varalakshmi, the wife of the plaintiff is not in dispute. Ex.P3 is filed to

prove the same. Similarly, the mother of the defendants and the mother of the plaintiff's wife Mrs.Saraswathy Ammal died in the year 1993, which is also not disputed and to prove the same Ex.P4 is filed. The legal heir certificate Ex.P5 proves the relationship between the parties. Under Ex.P6 to Ex.P8 Release Deed dated 13.11.1997, 03.12.2001 and 03.12.2001, it can be seen that the legal heirs of Mrs.Sarawathy Ammal namely Mrs.Sulochana, Mr.V.S.Murali and Mr.S.Narayana Reddy have released their respective shares, that is 1/6 share each in favour of Mrs.Varalakshmi, wife of the plaintiff. From these documents, it is established the fact that the plaintiff's wife Mrs.Varalakshmi has become entitled to 4/6 share in the suit property.

8. The above facts are not disputed. Even in the written statement except general denial, there is no specific denial relating to the Release Deeds executed in favour of the plaintiff's wife. From these documents, there is no doubt in the mind of this Court to hold that the plaintiff's wife Mrs.Varalakshmi became the owner of 4/6 shares in the entire suit property. It is also not in dispute, that the plaintiff's wife has settled the above 4/6 share in favour of the plaintiff under Ex.P9 Settlement Deed. In the Written Statement it is not denied the execution of settlement deed by wife of the plaintiff to him. There is no specific denial with regard to the execution of the Settlement Deed in favour of the

plaintiff. The Ex.P10 to Ex.P16 clearly shows that there is a demand for partition and exchange of notices between the parties. The only contention now seems to be with regard to the market value of the property and the Court fee paid.

9. On perusal of Ex.P6 to Ex.P8, the value of the property and the valuation made in the plaint, this Court does not find any suppression of facts. In fact, the property released in favour of the plaintiff's wife clearly set out in Ex.P6 to Ex.P8 Release Deed and the same has been clearly set out in the plaint also. Hence, merely on the contention of the defendants, it cannot be concluded that the Court fee has not been paid properly, the value of the property assessed to Rs.2,20,80,000/- in the plaint and the Court fee has been paid under Section 37(1) of the Tamil Nadu Court Fee Suit Valuation Act. Without any evidence to show that the value of the property is not correct. The defendants cannot raise such contention on mere surmise and conjecture. In fact, the defendants also paid the Court fee for declaring her 1/6 share in the suit property.

10. Taking into consideration all these aspects, besides 1st defendant remained ex-parte. The plaintiff has established right over the property to claim the partition of 4/6 share in the suit property. This Court holds that

the plaintiff has established his case and accordingly, he is entitled to preliminary decree for dividing the suit property and allotting 4/6 share in his favour. Similarly, the 2nd defendant also paid the Court fee for determining her 1/6 share in the suit property. In the result, issues are answered accordingly.

11. Accordingly, there will be a preliminary decree for dividing the suit property in six equal share and allotting 4/6 share to the plaintiff and 1/6 share to the 2nd defendant. Considering the relationship between the parties, there shall be no order as to costs.

sd/.N.S.K.J

21.02.2017

//Certified to be a true copy//

Dated this the day of सत्यमेव जयते 2017.

P.M./13.06.2017

COURT OFFICER

From 25.09.2008 the Registry is issuing certified copies of the Order/Judgment Decree in this format.