

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.879 of 2013

N.Shajahan ... Plaintiff

Vs

1.K.Havva Beevi

2.Mumtaj

3.Nilofer

4.Shameem

5.Nafeesa

6.Mumtaj

7.Jameela ... Defendants

Prayer:- This Civil Suit is filed under Section 26 and Order VII Rule 1 of CPC., and Order IV Rule 1 of O.S. Rules praying for (i)directing division of the immovable properties described as items (i) to (v) of Schedule 'A' hereto by metes and bounds into 96 parts and to allot ten such parts to the plaintiff; ii)directing apportionment of the movables in the form of money, lying in deposit in the various finance institutions and banks described in schedule 'B' hereto amongst the parties hereto proportionate to the shares each of

them has got therein; iii)appointing an Advocate Commissioner to make a local inspection of the immovable properties described as items (i) to (v) of Schedule 'A' hereto and to submit a report to this Court suggesting the mode of division and iv)directing the defendants to pay the costs of the suit.

For Plaintiff : Mr.S.M.Hameed Mohideen

For Defendants : Set Ex-parte

J U D G M E N T

This suit has been filed by the plaintiff for partition of the immovable properties described as items (i) to (v) of Schedule 'A' into 96 parts and to allot ten such parts to him and for apportionment of the money deposited in the various finance institutions and banks described in Schedule 'B' and also to appoint an Advocate Commissioner to make a local inspection of the immovable properties mentioned under 'A' Schedule to suggest the mode of division.

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

a)The plaintiff, being the younger brother of the deceased Dr.N.Kader Hussain. The defendants 6 and 7 are the younger

sisters of late Dr.N.Kader Hussain and the elder sisters of the plaintiff. The first defendant is the widow of the deceased. The defendants 2 to 5 are the daughters of the deceased. The said Dr.N.Kader Hussain, died intestate on 19.02.2013 without settling the schedule properties.

b)After the death of Dr.N.Kader Hussain, his estate devolved on his heirs namely, the plaintiff and the defendants. The entire estate of the deceased consists of 96 units. The first defendant, who is the widow of the deceased gets 12 units, the defendants 2 to 5 who are his daughters, gets 16 units each and similarly, the defendants 6 and 7, sisters of the deceased gets 5 shares each. The plaintiff who is the only brother of the deceased gets 10 units. The defendants 1 to 5 comes under the category of sharers and the plaintiff and the defendants 6 and 7 comes under the category of residuaries. The deceased and his heirs are Muslims, belonging to the Sunni Sect, adhering to the Hanafi School of Law. Hence, the plaintiff who comes under the category of residuaries as per Muslim law, demanded for partition of the estate of the deceased to the defendants 1 to 5, but his effort has not been fructified. Therefore, the plaintiff issued a legal notice to the defendants on 04.10.2013.

Since there was no response from the defendants 1 to 5, the plaintiff has come forward with the present suit.

3.The defendants were set ex-parte. P.W.1 in his evidence stated that he being the brother of the deceased, who comes under the category of residuaries as per Muslim law, is entitled for share aspect, as the deceased died intestate leaving behind the suit properties.

4.In the Ex-parte Evidence, the plaintiff examined himself as PW.1 and marked the following documents as Exs.P1 to P10 as documentary evidence in order to prove the suit claim:-

i)Ex.P1 to P6 are the sale deeds stand in the name of the deceased Dr.N.Kader Hussain viz., item (i), (iii), (iv), (v)(a), (v)(b) and partition deed in respect of item (v)[c] and (d) of Schedule A property respectively. Ex.P7 to P10 are the encumbrance certificates in respect of item nos.(i),(iii), (iv), (v)(a) to (d) of Schedule A property respectively.

5.The plaintiff also stated about the date of death of his brother and also spoken about the category of residuaries as per

Muslim law. According to the plaintiff, being a Muslim belonging to the Sunni Sect, adhering to the Hanafi school of law, he is entitled for partition of the schedule mentioned properties which stood in the name of the deceased.

6.The evidence of P.W.1 remained unchallenged and also there is no dispute in regard to the suit property remaining in the name of the deceased Khader Dr.N.Kader Hussain. Therefore, this Court is of the view that as per Personal law, the plaintiff who comes under the category of residuaries, is entitled to claim partition. Accordingly, preliminary decree is passed, for dividing the A Schedule property in the plaint into 96 parts and to allot 10 such parts to the plaintiff.

7.As far as the B schedule property is concerned, no evidence whatsoever is available on record to show that the deceased had deposited the money in the bank. Therefore, this Court is of the view that in the absence of any evidence to prove that those deposits stand in the name of the deceased, the plaintiff cannot claim any share in the B schedule property.

8. In the result, preliminary decree is passed only in respect of A schedule property for dividing the suit properties into 96 parts and to allot 10 such parts to the plaintiff and the suit is dismissed, insofar as the B schedule property is concerned, as there is no evidence to prove the plaintiff's claim. Accordingly, the suit is decreed as prayed for by the plaintiff, in respect of the relief of clause (i). No costs.

12.01.2017

Index:Yes/No
Web:Yes/No
DP

N.SATHISH KUMAR.J,

DP

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