

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.1088 of 2009

&

M.P.No.1 of 2009

1.B.Ramanujam (Deceased)

2.B.Arangannal

3.B.Damodaran

4.R.Bhanumathi

5.R.Senthil

6.R.Kavitha

7.R.Baskar

8.R.Mohan

... Appellants

(Appellants 4 to 8 brought on record as Legal representative of deceased 1st appellant and also respondent 6 recorded as Legal representative of deceased 1st appellant vide order of Court dated 08.09.2015 made in M.P.1 of 2015)

Vs

1.U.Devaki

2.G.Mohana

3.Sarangapani B (Deceased)

4.Gandhimathi B

5.T.Thirupurasundari

(Respondents 3 to 5 remained exparte in Lower Court. Notice may be dispensed with)

6.B.Veerammal

7.S.Lakshmi

8.S.Gnanasekar

9.S.Sundaresan

... Respondents

(Respondents 7 to 9 brought on record as Legal Representatives of the deceased 3rd Respondent vide order of the Court dated 20.03.2017 in C.M.P.No.1840 of 2017 in A.S.No.1088 of 2009)

Prayer: First Appeal filed under Section 96 of the Code of Civil Procedure against the Judgment and Decree passed O.S.No.1087 of 2006 dated 31.10.2007 by the Learned VII Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.P.Seshadri

For Respondents
1, 2, 4, 5, 7 to 9 : Mr.T.Sundaresan

For Respondent 3 : Died

For Respondent 6 : No Appearance

JUDGMENT

The above first appeal arises against the Judgment and Decree dated 31.10.2007 in O.S.No.1087 of 2006 on the file of the learned VII Additional Judge City Civil Court. The O.S.No.1087 of 2006 has been filed by the respondents 1 and 2 herein against their siblings and their mother claiming a 2/9th share in the suit schedule properties. The case of the plaintiffs was that the property belonged to their late father one M.Balakrishnan who had purchased the same out of his self earnings on 24.12.1955. He was in the possession and enjoyment of the properties till his death on 02.05.1990 and on his death he had left behind him surviving his wife (7th defendant), his daughters (plaintiffs, 5th and 6th defendant) and his sons (defendants 1 to 4). The plaintiff would contend that they are therefore entitled to 1/9th share each in the suit schedule property.

2.The suit was resisted by the defendants 3 to 4 by contending that the father had expressed his desire that on his demise the property was to be enjoyed by his wife till her lifetime and thereafter the property was to be divided between the children with the sons taking a 1/5th share each and the daughters together taking a 1/5th share. Therefore they contended that the shares as shown in the suit was erroneous.

3.The 7th defendant had filed a written statement supporting the case of her sons.

4.The learned VII Additional City Civil Judge, Chennai vide his Judgement dated 31.10.2007 decreed the suit as prayed for.

5.Challenging the Judgment and Decree the defendants 1, 3 and 4 and the legal heirs of the deceased Sarangapani(2nd defendant) filed the present appeal. This Court after considering the relationship of the parties had directed them to settle the matter and the parties had also attempted settlement talks. Infact when the matter come up on 28.11.2018 this Court after hearing both parties had passed the following order:

"The learned counsel for appellants submitted that there is no quarrel as regards the preliminary decree and now the issue is restricted to the limited compass of the allotment of shares. The parties are now attempting a settlement.

Post the matter under the Caption, "For Reporting Settlement" on 06.12.2018."

6.Today when the matter is listed, the learned counsel for the appellant submitted that the issue regarding allotment of shares has encountered a glitch, since there were tenants in occupation of the property. He would fairly concede that the preliminary decree has to be modified. In view of death of their mother the 7th defendant, whereby, each of the plaintiffs and defendants would now be entitled to 1/8th share in the suit property.

7.Accordingly, the preliminary decree is modified to the extent of the shares and the plaintiffs and the defendants would each be entitled to 1/8th share and the defendants shall pay necessary Court fees for allotment of their shares in the preliminary decree. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is also closed.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The VII Additional Judge,
City Civil Court,
Chennai.

2.The Section Officer,
VR Section, High Court,
Madras 04 (2 Copies)

A.S.No.1088 of 2009 &
M.P.No.1 of 2009

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