

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.02.2018

PRONOUNCED ON: 01.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.688 of 2015

V.Vaithyanathan

Plaintiff

Vs

1. S.Manimegalai
2. S.Vijayalakshmi

Defendants

Prayer:- This Civil Suit is filed under Order VII Rules 1 and 2 of CPC read with Order IV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : Ms.S.Mythreye Chandru

For Defendants : Set Exparte

JUDGEMENT

सत्यमेव जयते

This civil suit had been filed to pass a judgement and decree, against the Defendants:-

- (a) granting one half share (1/2nd share) in the suit property to the Plaintiff by a preliminary decree.
- (b) granting permanent decree for injunction to restrain the Defendants from in any way dealing with or meddling with the suit property.
- (c) directing the Defendants to pay costs of the suit

2. It had been stated in the plaint that he and his brother, late V.Sellamuthu, had purchased the suit property from R.Rathnammal, R.Ganesh Babu, R.Mohanarangam, Varalakshmi, S.Hema Latha, Sivagami @ Sivagama Sundari, under the sale deed, dated 28.05.1981, registered as Document No.1102 of 1981 in the Office of the Sub Registrar, Purasawalkam and that from the date of purchase, the Plaintiff was in absolute possession and enjoyment of the suit property. It has been further stated that out of his own earnings, the Plaintiff had purchased the suit property and due to love and affection, he included his brother V.Sellamuthu at the time of purchase of the suit property. The amount for purchase of the suit property was entirely borne by the Plaintiff and thereafter, the Plaintiff put up construction in the ground floor and in the first floor out of his own funds.

3. It has been further stated in the plaint that the Plaintiff was working as Engineer in the Government and on transfer, he shifted his residence in 2005 and he left his brother Sellamuthu to look after the property and collect rents. On 17.3.2011, his brother Sellamuthu died. The 1st Defendant is the wife and the 2nd Defendant is the daughter of his brother. To grab the entire property, the Defendants started creating problems in several ways. It has been further stated that whenever the Plaintiff visited the suit property to collect the rents, the Defendants abused the Plaintiff with filthy language and also stopped the tenants from paying the rents to the Plaintiff. The Defendants are illegally collecting the rent amount of nearly Rs.40,000/- per month. The property tax, EB connection and all revenue taxes till date only stand in the name of the Plaintiff and he is paying all taxes regularly.

4. It has been further stated in the plaint that though the Plaintiff had purchased the suit property out of his own funds, the Plaintiff is legally entitled to one half share in the suit property. It has been further stated that the Plaintiff came to know that the Defendants are attempting to sell the suit property. It is under these circumstances that this civil suit has been filed for the reliefs as stated above.

5. Though the Defendants were served on 9.10.2015, no written statement had been filed by the Defendants within time and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendants were set exparte and Exparte Evidence was ordered to be recorded by the order of this court dated 09.11.2017.

6. The Plaintiff had filed his proof affidavit for his chief examination and receipt of four documents as documentary evidence to prove the suit claim. In the Exparte Evidence, the Plaintiff had examined himself as PW.1 and marked Exs.P1 to P4 as documentary evidence in order to prove the suit claim.

7. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P4 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and consequently, the suit is decreed, as prayed for, with costs and the Plaintiff is entitled to one half share in the suit property, as prayed for and accordingly, a preliminary decree for partition in favour of the Plaintiff is granted. Without awaiting for an application for passing of a final decree, for the purpose of inspecting the suit property and to give a proposal for allotment

of one half share in the suit property to the Plaintiff, by demarcating the suit property, Mr.R.Senthil, Advocate, E.No.MS.746 of 2016, Cell No.9943244355, is hereby appointed as the Advocate Commissioner and his initial remuneration is fixed at Rs.25,000/- (Rupees Twenty Five Thousand Only).

01.03.2018

Index:Yes/No

Web:Yes/No

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1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 - V.Vaithyanathan

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the certified copy of the sale deed, dated 28.5.1981.

2. Ex.P2 is the property tax dated 28.3.2014.

3. Ex.P3 is the EB Receipt.

4. Ex.P4 is the encumbrance certificate, dated 09.06.2015.

3. List of Witnesses Examined on the side of the defendants:-

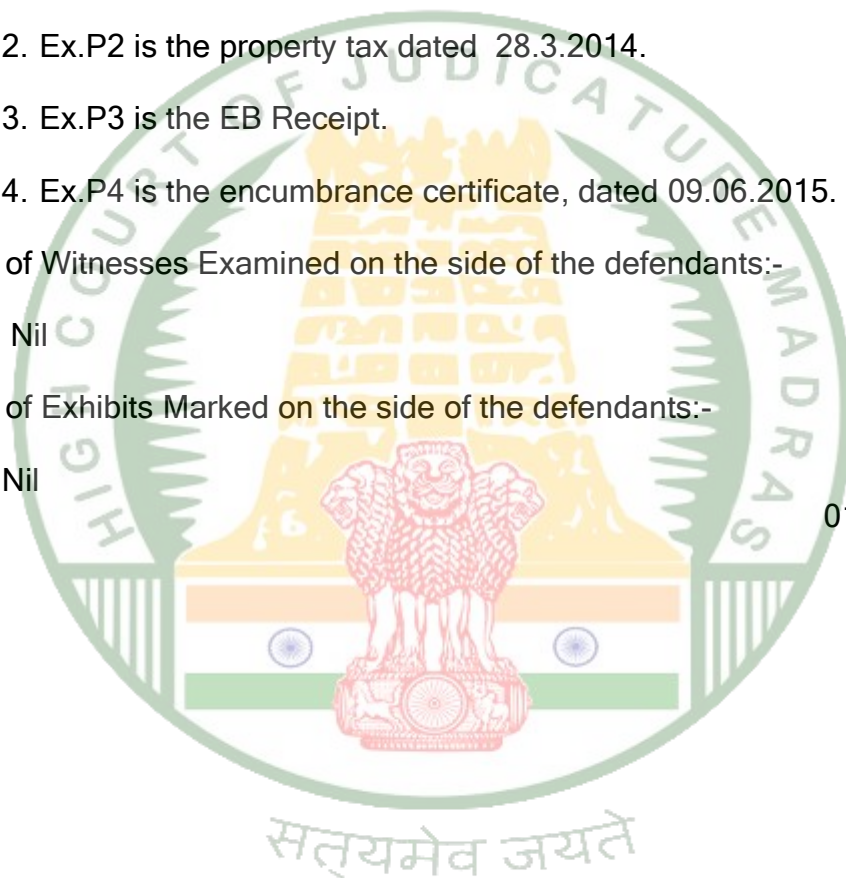
Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

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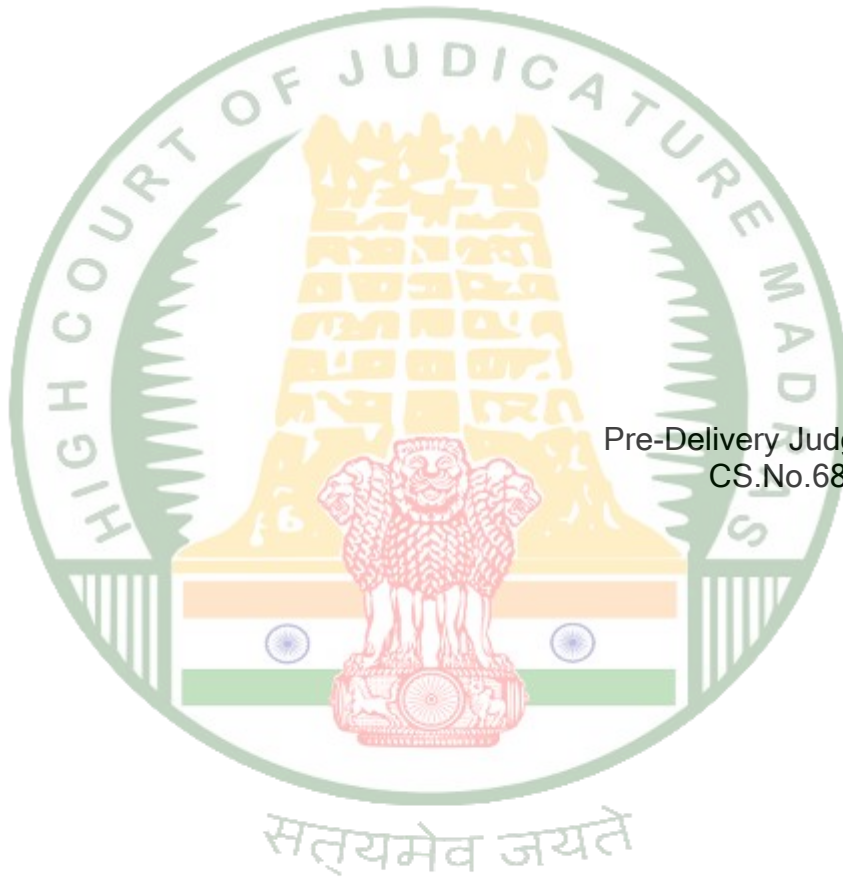
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C.V.KARTHIKEYAN, J.

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Pre-Delivery Judgement in
CS.No.688 of 2015

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