

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.08.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.285 of 2018
and
C.M.P.No.13243 of 2018

S.Balasubramaniam

.. Appellant

Vs

S.Dorai Raj (deceased)
rep. by Power of Attorney

D.Udayakumar

1.D.Udayakumar

2.D.Rajendran

3.D.Ramesh Babu

4.Manjula Raviraj

5.R.Prasad

6.R.Prasanna

7.Rajeswari

8.R.Vijayakumari

9.S.Uma Rani

10.S.Sarojini

11.K.Vijayalakshmi

12.K.Kumaran

13.K.Anand

14.K.Manjula

... Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w
Clause 15 of Letters Patent against the order and decretal order
passed in A.No.6617 of 2017 in C.S.No.1037 of 2010 dated
11.04.2018.

A. No. 6617/2017 in C.S.No.1037 of 2010:Application praying that
this Court be pleased to pass a decree an admission and grant a
preliminary decree for partition of the 1/5th share of the
plaintiffs in the plaint 'A' Schedule Property.

For Appellant .. Mr.M.Kalayanasundaram,
Sr. Counsel
for Mr.B.Venugopal

For Respondents.. Mr.T.V.Ramanujam,
Sr. Counsel
for Mr.V.G.Suresh Kumar for R1

JUDGMENT

(Judgment of the Court was delivered by M.M.SUNDRESH, J.)

The appellant is the second defendant in the suit. The suit is filed for partition and separate possession. Pending the suit, the plaintiffs filed an application seeking a decree on admission with respect to 1/5 share of the A Schedule property. The learned single Judge by placing reliance upon the statement made in the written statement that the first plaintiff is entitled for 1/5 share in the A schedule property, though he has asked for 1/4 share, was pleased to grant a decree on admission. Challenging the same, the appellant being the second defendant filed the present appeal.

2.The order of the learned single Judge is sought to be predicated on the sole ground that the Testamentary Original Suit is pending before this Court. It is also ripe for disposal. On a query, the learned senior counsel appearing for the appellant would submit that even as per the Will stated to be relied on by the appellant, the first plaintiff is entitled to only 1/5 share. Thus we are of the view that there is no basis for the appeal. It is the case of the first plaintiff that he is entitled for $\frac{1}{4}$ share. Learned single Judge has granted only 1/5 share by way of preliminary decree by taking note of the clear statement made in the written statement. In such view of the matter, we do not find any error in the order passed by the learned single Judge.

3.Learned senior counsel appearing for the appellant would submit that the said decree is subject to the final order to be passed in the Testamentary Original Suit. We have no difficulty in observing so. This observation would in fact help the plaintiffs to seek another preliminary decree in the event of Testamentary Original Suit being dismissed. Inasmuch as such liberty has been sought for by the appellant himself, we deem it fit to grant it. While dismissing the appeal, we make it clear that the preliminary decree passed is subject to the result of the pending Testamentary Original Suit. After all, there is no finality to the preliminary decree in law.

4.In the result, the original side appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

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To

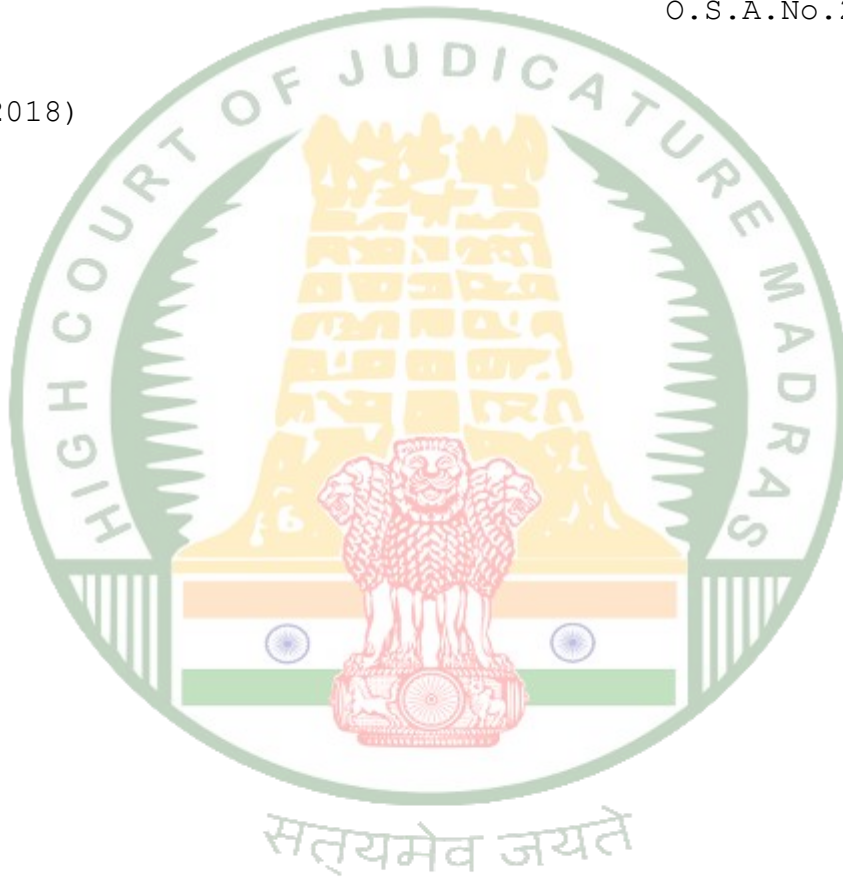
The Sub Assistant Registrar,
Original Side, High Court, Madras.

+1 CC to Mr.B. Venugopal, Advocate sr 52783.

+1 CC to Mr.V.G. Suresh Kumar, Advocate sr 53364.

O.S.A.No.285 of 2018

SP (29/08/2018)



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