

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 30TH DAY OF JULY 2018

THE HON'BLE MR. JUSTICE N.SATHISHKUMAR

A. No.4205 of 2018

in

C.S.No.1037 of 2010

C.S. No.1037 of 2010:-

1. S.Dorairaj (Deceased) (*)
rep. by Power of Attorney,
D.Udayakumar,
New No.10, Old No.67, I Block,
9th Street, Anna Nagar East,
Chennai-600 102.
2. D.Udayakumar, (*)
No.18, Manickeswari Road,
Kilpauk, Chennai-600 010.
3. D.Rajendran, (*)
No.5, Govindan Street,
West Banu Nagar, Ambattur,
Chennai-600 053.
4. D.Ramesh Babu, (*)
New No.10, Old No.67, I Block,
Anna Nagar, Chennai-600 102.
5. Manjula Raviraj, (*)
6. R.Prasad, (*)
7. R.Prasanna, (*)
Plaintiffs 5 to 7 are residing at
New No.44, Old No.96, F Block,
First Street, Anna Nagar East,
Chennai-600 102.
8. Rajeswari, (*)
Old No.67, New No.10, I Block,
Anna Nagar East, Chennai-600 102.

9. R.Vijayakumari, (*)
No.17/8, Malaviya Avenue,
Thiruvanmiyur, Chennai-600 041.

10. S.Umarani, (*)
No.9, Anna Avenue,
Chennai-600 020.

... Plaintiffs

(*) Plaintiffs 2 to 10 brought on record
as legal heirs of the deceased sole
plaintiff as per order dated 05.06.2014
made in A. Nos.723 & 724 of 2014

-Versus-

1. Tmt.S.Sarojini,
No.7, Vasu Street,
Kilpauk, Chennai-600 010.

2. S.Balasubramaniam,
174/93, Poonamallee High Road,
Purasawakkam, Chennai.

3. Tmt.K.Vijayalakshmi,

4. K.Kumaran,

5. K.Anand,

6. Tmt.K.Manjula,
3 to 6 are residing at No.244,
Kilpauk Garden Road, Kilpauk,
Chennai-600 010.

... Defendants

A No.4205 of 2018:-

1. S.Dorairaj (Deceased)
rep. by Power of Attorney,
D.Udayakumar,
New No.10, Old No.67, I Block,
9th Street, Anna Nagar East,
Chennai-600 102.

By Legal Representative

2. D.Udayakumar,
No.18, Manickeswari Road,
Kilpauk, Chennai-600 010.

3. D.Rajendran,
No.5, Govindan Street,
West Banu Nagar, Ambattur,
Chennai-600 053.
4. D.Ramesh Babu,
New No.10, Old No.67, I Block,
Anna Nagar, Chennai-600 102.
5. Manjula Raviraj,
6. R.Prasad,
7. R.Prasanna,
Plaintiffs 5 to 7 are residing at
New No.44, Old No.96, F Block,
First Street, Anna Nagar East,
Chennai-600 102.
8. Rajeswari,
Old No.67, New No.10, I Block,
Anna Nagar East, Chennai-600 102.
9. S.Umarani, (*)
No.9, Anna Avenue,
Chennai-600 020. ...Applicants/Plaintiffs

-Versus-

1. Tmt.S.Sarojini,
No.7, Vasu Street,
Kilpauk, Chennai-600 010.
2. S.Balasubramaniam,
174/93, Poonamallee High Road,
Purasawakkam, Chennai.
3. Tmt.K.Vijayalakshmi,
4. K.Kumaran,
5. K.Anand,
6. Tmt.K.Manjula,
Defendants 3 to 6 are residing at No.244,
Kilpauk Garden Road, Kilpauk,
Chennai-600 010. ... Respondents/Defendants

Application praying that this Hon'ble Court be pleased to appoint an Advocate Commissioner to inspect the suit A schedule property and to submit a report to his Hon'ble Court, on the proposed division and demarcation of the one fifth share of plaintiffs 2 to 10 in the suit property.

This application coming on this day before this court for hearing the court made the following order:-

This application has been filed to appoint an Advocate Commissioner to inspect A Schedule property and to divide the suit property into five equal shares in pursuant to the preliminary decree passed by this Court.

2.The suit itself is filed for partition of the property. This Court by its judgment dated 11.04.2018 passed a preliminary decree in respect of 'A' Schedule property, declaring the rights of the plaintiffs in the 'A' Schedule property. As per the specific admission made by the contesting defendants in their written statement, a preliminary decree had been passed to the effect that the plaintiffs are entitled to 1/5th share in the 'A' Schedule property. The remaining 1/5th share were left open belongs to the mother of the parties, as the same is the subject matter of T.O.S.No.5 of 2012. In fact T.O.S.No.5 of 2012 has been filed for appointment of Advocate Commissioner to divide the suit property.

3.It is to be noted that 1/5th share which is the subject matter of the Will, shown as 'B' Schedule property in the plaint. The preliminary decree passed in respect of 'A' Schedule property alone, which is not disputed by both sides. The entire 'A' & 'B' Schedule properties are in possession of the defendants.

4.The sketch / plan filed before this Court also indicates that the 1/5th share which is the subject matter of the Will contiguous property, which can be allotted to the any of the parties even after the results of the T.O.S.No.5 of 2012, 'A' schedule property has been clearly demarcated in the plan in respect of which the preliminary decree had already been passed by this Court.

5.The only objection of the learned counsel appearing for the defendants is that they have already filed Original Side Appeal against the preliminary decree, but, no materials have been placed to show that the above decree and judgment has been stayed in the appeal.

6.In view of the above, as the 'A' schedule property has separately demarcated in the plaint, the preliminary decree had already been passed, I am of the view that no

prejudice whatsoever is caused to other side if the Advocate Commissioner is appointed to measure and divide the property into equal shares and allot 1/5th share to the plaintiffs.

7. Accordingly, Mr.V.Vasanthakumar, Advocate is hereby appointed as the Advocate Commissioner to divide the suit property into equal shares and allot 1/5th share to the plaintiffs. The Advocate Commissioner shall be paid a sum of Rs.25,000/- towards his remuneration. The Commissioner shall get aid from the qualified Surveyor or Engineer in dividing the property and file a report before this Court on 20.08.2018.

Sd/-N.S.K.J
30.07.2018

//Certified to be a true copy//

Dated this the day of 2018
JJ 25/10/18

COURT OFFICER

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