

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2018

CORAM

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.S.No.505 of 2013

T.Thanigainathan

... Plaintiff

..Vs..

1.Bhavani Sankari
2.Koperundevi
3.P.Padmanabhan
4.P.Prabhavathy

... Defendants

Plaint filed under Order VII Rule 1 of C.P.C R/W Order IV Rule 1 of High Court O.S. Rules praying to pass a judgment and decree:-

a) for partition and separate possession of the plaintiff's 1/6th share in the suit property by metes and bounds to the plaintiff,

b) to delegate an enquiry for the ascertainment of the mesne profits in the suit property in separate proceedings during the final decree stage,

c) For costs

For Plaintiff

: Mr.S.L.Kalavathy

For Defendants 3 & 4

: Mr.V.Srikanth

J U D G M E N T

The suit has been filed seeking partition and separate possession of the plaintiff's 1/6th share in the suit property.

2. The contents of the plaint in brief are as follows :

(i) The suit property situated at Door No.40, Alangatha Pillai Street, Triplicane, Chennai – 600 005, belongs to the plaintiff's maternal grand mother Mrs.Navamani Ammal, having inherited the same from her father. The said Mrs.Navamani Ammal died intestate in or about 1965-70, leaving behind a son by name Mr.M.Parthasarathy and daughter by name Mrs.Thirupurasundari. The plaintiff and the defendants 1 and 2 are the legal heirs of Mrs.Thirupurasundari D/o.Mrs.Navamani Ammal. The defendants 3 and 4 are the son and daughter of Mr.M.Parthasarathy. The mother of the plaintiff Mrs.Thirupurasundari, died intestate on 24.3.1982 and his maternal uncle Mr.M.Parthasarathy, died intestate on 31.8.1980 and the wife of Mr.M.Parthasarathy, also died on 23.5.2007.

(ii) According to the plaintiff, after his mother's demise, he demanded partition from his aunt Mrs.Saraswathy, who was managing the property, after the death of his uncle Mr.M.Parthasarathy, but, she was postponing the same.

<http://www.judis.nic.in> In view of the high regard he had towards his aunt, the plaintiff could not

pressurize her. After the death of his aunt on 23.5.2007, the third defendant though agreed to partition the property amicably, however, did not come forward to effect the division of the property. Hence, the plaintiff had issued a notice, to the defendants on 03.04.2013, through his counsel demanding partition and separate possession of his 1/6th share. The third defendant alone sent a reply on 23.4.2013, denying the plaintiff's share and he required eight weeks time to send a detailed reply. Since, no reply was forthcoming, the plaintiff filed the present suit for partition and separate possession of his 1/6th share.

3. The defendants 1 and 2 remain ex-parte. The defendants 3 and 4 filed a written statement. The sum and substance of the allegations made by the defendants 3 and 4 are as follows :

(i) The claim of the plaintiff that the suit property belongs to Mrs.Navamani Ammal and she had inherited the same from her father are specifically denied. It was claimed that the suit property was purchased by late Mr.Mackawoo Mudaliar, in the year 1810 and thereafter, the property has been inherited by his male descendants. The suit property was allotted to Mr.Suburraya Mudaliar, by a deed of partition dated 20.04.1880. The said Mr.Suburraya Mudaliar's grand son Mr.T.V.Manickavelu Mudaliar, inherited the property through late Mr.Ponnusamy Mudaliar, S/o. Mr.Suburraya Mudaliar. It is stated that Mr.T.V.Manickavelu Mudaliar, died on 14.7.1943, leaving behind

three sons viz., 1.M.Munusamy Mudaliar 2. M.Ramamurthy and 3. M.Parthasarathy. Apart from the three sons, he also left behind two daughters viz., 1.Thirupurasundari (mother of plaintiff and D1 & D2) and 2.Vedavalli.

(ii) It is also claimed that Vedavalli died as a spinster and M.Munusamy Mudaliar and M.Ramamurthy died as bachelors on 01.10.1948 and 29.5.1944, respectively. Thus, the father of the defendants 3 and 4 viz., Mr.M.Parthasarathy, alone inherited the property as the sole surviving coparcener. It is claimed that late Mr.T.V.Manickavelu Mudaliar, died on 14.7.1943 and his wife Mrs.Navamani Ammal died on 10.01.1967. It is further claimed that since late Mr.T.V.Manickavelu Mudaliar, died prior to 1956 i.e. on 14.7.1943, his daughter Mrs.Thirupurasundari (mother of plaintiff and D1 & D2) does not have any right over the suit property. Therefore, the plaintiff also does not have any right over the suit property. On the above pleadings the defendants 3 and 4 sought for dismissal of the suit.

4. The plaintiff filed a reply statement contending that though the defendants referred to many documents in the written statement none of the documents were filed to prove the veracity of the claim made in the written statement. He would also plead that assuming Mr.T.V.Manickavelu Mudaliar, was the absolute owner of the property, the plaintiff's grand mother Mrs.Navamani Ammal, being his wife, has got half share of the property,

under the Hindu Women's Right to Property Act 1937, and under Section 14(2) of Hindu Succession Act the limited interest obtained by her under the provisions of the Hindu Women's Right to Property Act 1937, would enlarge and become the absolute property of his grand mother Mrs.Navamani Ammal. After her death on 10.01.1967, his mother Mrs.Thirupurasundari being the daughter would inherit the half share, under Section 15 of the Hindu Succession Act, 1956. Therefore, the plaintiff would still entitled to 1/6th share in the property.

5. On the above pleadings, the following issues were framed by this Court on 27.8.2014, for determination in the suit :

- (i) Whether the plaintiff is entitled to 1/6th share in the suit property ?
- (ii) Whether the plaintiff is entitled to 1/6th share in the mesne profits/rental income of the the suit property ?
- (iii) To what other reliefs, the parties are entitled to ?

6. The plaintiff was examined as P.W.1 and he has also produced Exhibits P.1 to P5. The third defendant was examined as D.W.1 and no documentary evidence was produced on the side of the defendants.

7. I have heard Ms.S.K.Kalavathy, learned counsel appearing for the plaintiff and Mr.V.Srikanth, learned counsel appearing for the defendants 3 and 4.

8. Issue No.1:

In order to find out the quantum of share of the plaintiff, it would be necessary to find out the nature of the property. If, the property shown to be belonging to Mrs.Navamani Ammal, then, the plaintiff would be entitled to 1/6th share of the property. If it is held to be belonging to Mr.T.V.Manickavelu Mudaliar, who died on 14.7.1943, (prior to Hindu Succession Act) the plaintiff will not be entitled to get 1/6th share. Before deciding the quantum of the share the plaintiff would be entitled to the nature of the property, has to be determined. The plaintiff has examined himself as P.W.1. He filed his proof affidavit stating that the property belonged to his grand mother Mrs.Navamani Ammal. There is very little or no documentary evidence to establish the original ownership of the property. The plaintiff would contend that even accepting the claim of the defendants 3 and 4 that the property belonged to Mr.T.V.Manickavelu Mudaliar, he would be entitled to 1/6th share. The plaintiff as P.W.1 would admit that he does not know as to how the property belongs to his grand mother and he would only state that the power connection was granted in his grand mother's name. In his evidence in cross examination P.W.1 would admit that he does not have any other evidence to show his grand mother's title to the suit property. The third defendant Mr.P.Padmanabhan, who has been examined as D.W.1 has filed proof affidavit, wherein he had traced the title of the property to Mr.Subburaya Mudaliar, under a partition deed dated 20.04.1880. It is also not in dispute that the grand father of the plaintiff Mr.T.V.Manickavelu Mudaliar, is the grand

son of Mr.Suburaya Mudaliar.

9. It is also claimed that Mr.Parthasarathy being the only son will alone be entitled to the suit property. D.W.1 defendant referred to various documents in his proof affidavit. None of the documents have been produced before this Court. From the oral evidence on record, the evidence of D.W.1 is logical and convincing. He has traced the title of the property from the hands of his grand father Mr.T.V.Manickavelu Mudaliar. Though the documents referred to by him in the proof affidavit have not been produced before this Court, I am of the considered opinion that the oral evidence of D.W.1 is quite acceptable. Hence, I conclude that the suit property originally belonged to the grand father of the plaintiff viz., Mr.T.V.Manickavelu Mudaliar. It is also admitted that the Mr.T.V.Manickavelu Mudaliar died on 14.07.1943, prior to the coming into force of the Hindu Succession Act. However, in view of the enactment of the Hindu Women's Right to Property Act 1937, Mrs.Navamani Ammal, grand mother of the plaintiff would get a limited right over the properties of her husband.

10. As per Section 3(2) of the Hindu Women's Right to Property Act 1937, when a Hindu governed by any school of Hindu law other than the Dayabhaga School or by customary law dies having at the time of his death an interest in a Hindu joint family property, his widow shall, subject to the provisions of sub-section (3), have in the property the same interest as he himself had.

11. Therefore, Mrs.Navamani Ammal, would inherit the same interest which Mr.T.V.Manickavelu Mudaliar had in the property at the time of his death. Admittedly, Mr.T.V.Manickavelu Mudaliar was survived by his three sons viz., 1.M.Munusamy Mudaliar 2. M.Ramamurthy and 3. M.Parthasarathy and his wife Mrs.Navamani Ammal. Therefore, Mr.T.V.Manickavelu Mudaliar, was entitled to 1/4th share in the suit property at the time of his death. On the death of Mr.T.V.Manickavelu Mudaliar, on 14.07.1943, in view of Section 3(2) of the Hindu Women's Right to Property Act, 1937, his 1/4th share would devolve on his wife Mrs.Navamani Ammal, of course, with a limited right as provided under Sub Section 3(3) of the Act. The other two sons of Mr.T.V.Manickavelu Mudaliar viz., M.Munusamy Mudaliar and M.Ramamurthy have died as bachelors on 01.10.1948 and 29.5.1944, respectively. Therefore, their shares in the property would devolve on their brother Mr.M.Parthasarathy, as per Mitakshara law. Therefore, Mr.M.Parthasarathy, became entitled to 3/4th share and Mrs.Navamani Ammal became entitled to 1/4th share, as a limited owner.

12. On the enactment of the Hindu Succession Act in 1956 and in view of the provisions of Section 14(2) of the said Act, the limited interest which Mrs.Navamani Ammal possessed in the 1/4th share would blossom into an absolute estate. Therefore Mrs.Navamani Ammal is entitled to 1/4th share and Mr.M.Parthasarathy, will be entitled to the remaining 3/4th share.

Mrs.Navamani Ammal died on 10.01.1967, leaving behind her daughter

Mrs.Thirupurasundari and her son viz., Mr.M.Parthasarathy. Since $1/4^{\text{th}}$ share had become the absolute property of Mrs.Navamani Ammal, that would be inherited by her legal heirs as per Section 15 of the Hindu Succession Act, 1956. Thus, her daughter Mrs.Thirupurasundari, would be entitled to $1/8^{\text{th}}$ share in the suit property. This, $1/8^{\text{th}}$ share inherited by Mrs.Thirupurasundari, would on her death devolve on her children viz., the plaintiff and defendants 1 and 2. Therefore, the plaintiff would be entitled to $1/24^{\text{th}}$ share and the defendants 1 and 2 who are the daughters of Mrs.Thirupurasundari, would each be entitled to $1/24^{\text{th}}$ share and the remaining $21/24^{\text{th}}$ shares would go to Mr.M.Parthasarathy.

13. Therefore, this issue is answered partly in favour of the plaintiff holding that the plaintiff will be entitled to $1/24^{\text{th}}$ share in the suit property.

14. Issue No.2

(i) Whether the plaintiff is entitled to $1/6^{\text{th}}$ share in the mesne profits/rental income of the suit property ?

Plaintiff's mother had died on 24.03.1982, but the plaintiff has chosen to file the suit only in the year 2013. However, it is found that the plaintiff is entitled to $1/24^{\text{th}}$ share and he would be entitled to the said share in the mesne profits.

(ii) In view of the above discussion, the plaintiff would be entitled to get preliminary decree for partition of his 1/24th share alone as well as his share in the mesne profits till date of handing over possession.

15. In fine, the suit is decreed granting preliminary decree infavour of the plaintiff, declaring his 1/24th share in the suit property and his right to mesne profits from the date of suit till date of delivery of possession. The quantum of mesne profits is relegated to separate proceedings under Order 20 Rule 12 C.P.C. Considering the relationship between the parties there will be no order as to costs in this proceedings.

23.01.2018

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List of the witnesses examined on the side of the plaintiff:

P.W.1 – Mr.T.Thanigainathan

List of Exhibits marked on the side of the plaintiff:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description</i>	<i>Dated</i>
1	Ex.P1	Encumbrance certificate 1-1-1966 to 31-12-1985	08.11.2012
2	Ex.P2	Encumbrance certificate 1-1-1986 to 25-9-2012	26.09.2012
3	Ex.P3	Notice by plaintiff's counsel to defendants	03.04.2013
4	Ex.P4	Postal acknowledgments of D2 to 4	...
5	Ex.P5	3 rd defendants advocate's reply	23.4.2013

List of the witnesses examined on the side of the defendants:

D.W.1 - Mr.P.Padmanabhan

List of Exhibits marked on the side of the defendants: Nil**23.01.2018**

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Index : Yes/ No

Internet : Yes/ No

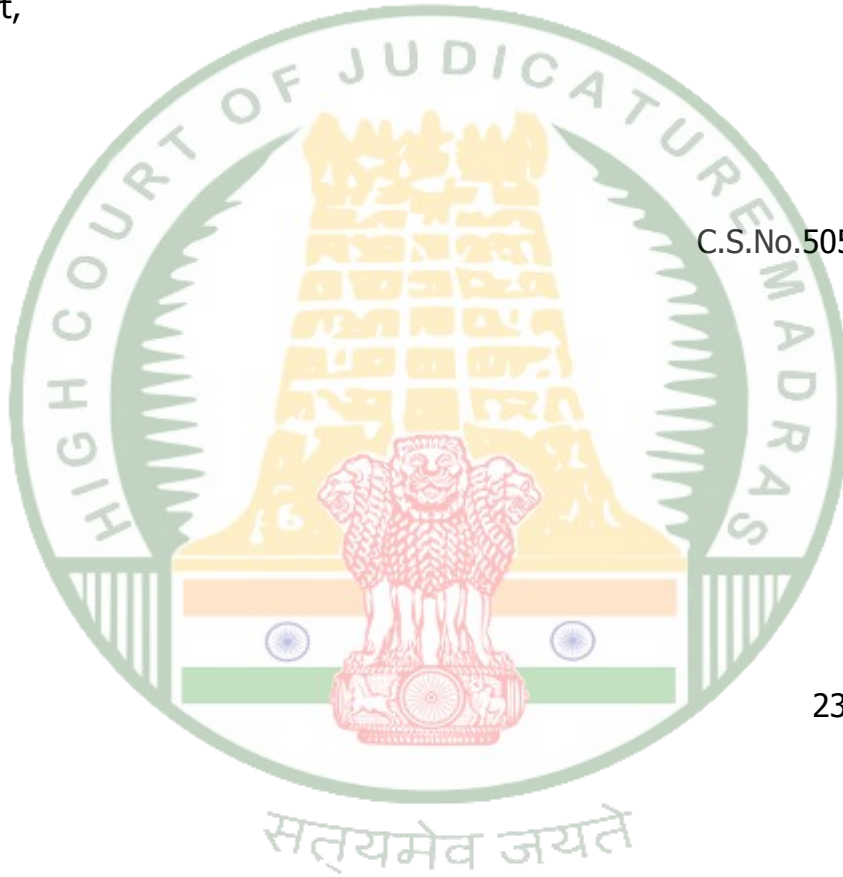
Speaking Order/ Non-speaking Order

R.SUBRAMANIAN, J.

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To

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



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