

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 16.12.2019
Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

O.S.A.No.219 of 2019
and
C.M.P.No.20101 of 2019

A.Ganesan .. Appellant

Vs

A.Paramasivan ... Respondent

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w Clause 15 of Letters Patent to set aside the fair order and decreetal dated 20.02.2019 made in Appln.No.685 of 2019 in C.S.No.29 of 2018.

A.No.685 of 2019: Praying to pass preliminary decree for partition based on the Admission of the defendant.

For Appellant .. Mr.C.Jagadish
For Respondent .. Ms.M.Arul Mangai

JUDGMENT

(Delivered by M.M.SUNDRESH, J.)

This appeal is preferred against the order of the learned single Judge in Appln.No.685 of 2019 in C.S.No.29 of 2018 seeking to invoke Order 12 Rule 6 C.P.C. Thus, the appellant sought for decree of admission by the respondent.

2.Learned counsel appearing for the appellant submitted that the entitlement of the share has not been disputed by the respondent both in the written statement and also in the memo filed. Therefore, he cannot be allowed to wriggle out of the same. The learned single Judge has wrongly dismissed the application on the premise that the matter has reached the trial stage.

3.Learned counsel appearing for the respondent submitted that the written statement has to be seen in its own context. While the share of the appellant was not disputed, it is the specific case of the respondent that there was a oral partition. The subsequent memo also has to be seen in that context, especially, when the appellant in his proof affidavit has also stated that there was a registered partition earlier under Ex.P3 dated 16.09.1970 and Ex.P6 is therefore a further release deed made by the mother. Under Ex.P3, only $\frac{1}{4}$ share has been given to the father with the remaining $\frac{3}{4}$ each to the mother, appellant and the respondent. The appellant cannot misconstrue the said document. Similarly, under Ex.P6, the mother has given up her $\frac{1}{3}$ share devolved on her pursuant to the death of the father. Thus, she is also entitled to her share under Ex.P3, which has not been released under Ex.P6. She is also not a party.

4.In the light of the submission made by the learned counsel for the parties, we do not find any reason to interfere with the order of the learned single Judge. The matter has already reached the trial stage. There are contentious issues involved. An admission will have to be unequivocal. When it is subject to interpretation, the Court cannot give its stamp of approval and compel the parties to act upon it. There are subsequent applications filed after the memo dated 14.06.2018, which have been dismissed. We are of the view that it would be appropriate to implead the mother also as a party defendant in the suit. The question as to whether the mother has got any right in the suit property as against the appellant and the respondent is the issue which has to be decided at the time of disposing the suit. The extent which has been conveyed to the appellant, respondent and the mother also will have to be looked into.

5.In such view of the matter, we are not in a position to allow this appeal giving $\frac{1}{2}$ share of the suit properties to both the appellant and the respondent. Accordingly, the Original Side Appeal stands dismissed. However, we request the learned single Judge to expedite the hearing and dispose of the suit within a period of four months. We further direct the parties to cooperate for the completion of evidence. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

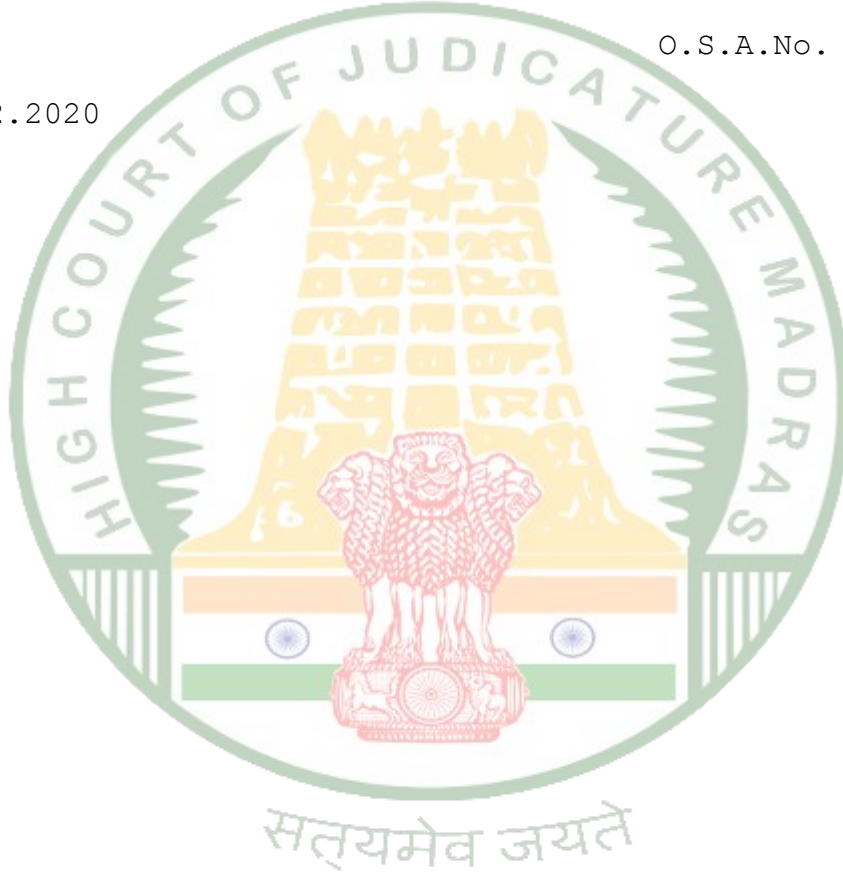
The Sub Assistant Registrar,
Original Side,
High Court, Madras.

+1cc to Mr.C.Jagadish, Advocate, SR.No.104681.

+1cc to Mr.M.Arul Mangai, Advocate, SR.No.104371.

EV(CO)
CSR: 26.02.2020

O.S.A.No. 219 of 2019



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