

THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 5TH DAY OF FEBRUARY 2019

THE HON'BLE MR. JUSTICE R.SUBRAMANIAM

A. No.8107 of 2017

in

C.S.No.86 of 2014

CS.No.86 of 2014:

Srinivasan P.Kannan
S/o.Late P.S.Kannan,
Block 419, # 07-211
Woodlands Street 41
Singapore-730 419.

...Plaintiff

-Versus-

1.P.S.Varadan
S/o.Late P.Srinivasan
No.5/28, Royapettah High Road,
Chennai-14.

2.Mr.Murali,
No.5/28, Royapettah High Road,
Chennai-600 014.

3.Mrs.K.Jalaja
W/o.Late P.S.Kannan,
Plot No.66, Door No.9,
Mahalakshmi Nagar,
1st Main Road,
Adambakkam, Chennai-88.

4.Ms.K.Jayanthi
D/o.Late P.S.Kannan
Plot No.66, Door No.9,
Mahalakshmi Nagar,
1st Main Road,
Adambakkam, Chennai-88.

5.Mrs.Kayani Ammal (deceased)
W/o.Krishnan
Flat No.102, Pavithra Residency
Street No.9, Vivekanandapuram
Sainipuri, Secundrabad - 500 094.

6.Mrs.Kasthuri Rangan
No.453/9 M.G.Nagar, Phase I
Plot No.27A
Urapakam West
Rajini Mahal Kalyana Mandapam
Entrance Gate 603 211.

7.Mrs.Mythili
No.453/9, M.G.Nagar
Phase I, Plot No.27A
Urapakam West
Rajini Mahal Kalyana Mandapam
Entrance Gate 603 211.

8.Mr.R.Raman
No.3/1/65, J.J.Nagar West
Mogappair West
Chennai - 600 037.

The defendants 5 to 8 impleaded as for
orders dated 17.07.2017 passed in
A.No.505 of 2017 in C.S.No.86 of 2014.

9.Mr.K.Krishnan

10.Mr.K.Badri

11.Mrs.K.Chitra

Defendants 9 to 11 at Plot No.102
Pavithra Residency, Street No.9,
Vivekanandapuram
Sainikpuri, Secundrabad - 500 094.

(Defendants 9 to 11 brought on record as
legal heir's of the deceased 5th
defendant as per order dated 31.08.2018
in A.Nos.3908 & 3909 of 2018 and time
extended as per order dated : 17.09.2018.)

...Defendants

A.No.8107 of 2017:

1.P.S.Varadan
S/o.Late P.Srinivasan
No.5/28, Royapettah High Road,
Chennai-14.

...Applicant/Defendant

1.Srinivasan P.Kannan
S/o.Late P.S.Kannan,
Block 419, # 07-211
Woodlands Street 41
Singapore-730 419.

...Respondent/Plaintiff

2.Mr.Murali,
No.5/28, Royapettah High Road,
Chennai-600 014.

3.Mrs.K.Jalaja
W/o.Late P.S.Kannan,
Plot No.66, Door No.9,
Mahalakshmi Nagar,
1st Main Road,
Adambakkam, Chennai-88.

4.Ms.K.Jayanthi
D/o.Late P.S.Kannan
Plot No.66, Door No.9,
Mahalakshmi Nagar,
1st Main Road,
Adambakkam, Chennai-88.

5.Mrs.Kayani Ammal (deceased)
W/o.Krishnan
Flat No.102, Pavithra Residency
Street No.9, Vivekanandapuram
Sainipuri, Secundrabad - 500 094.

6.Mrs.Kasthuri Rangan
No.453/9 M.G.Nagar, Phase I
Plot No.27A
Urapakam West
Rajini Mahal Kalyana Mandapam
Entrance Gate 603 211.

7.Mrs.Mythili
No.453/9, M.G.Nagar
Phase I, Plot No.27A
Urapakam West
Rajini Mahal Kalyana Mandapam
Entrance Gate 603 211.

8.Mr.R.Raman
No.3/1/65, J.J.Nagar West
Meganagar West
Chennai - 600 037.

9.Mr.K.Krishnan

10.Mr.K.Badri

11.Mrs.K.Chitra

Respondents 9 to 11 at Plot No.102
Pavithra Residency, Street No.9,
Vivekanandapuram, Sainikpuri, Secundrabad - 500 094.

(Respondents 9 to 11 brought are brought on
record on legal heir's of the deceased 5th
defendant as per order dated 31.08.2018
in A.Nos.3908 & 3909 of 2018 and time
extended as per order dated : 17.09.2018.)

...Respondents/Defendants

Application praying that this Hon'ble Court be
pleased to reject the above plaint as not maintainable.

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

The 1st defendant in C.S.No.86 of 2014, which is a
suit for partition, has filed this application seeking
rejection of plaint under Order VII Rule 11 of the Code
of Civil Procedure.

2.According to the plaintiff, the suit properties
were ancestral joint family properties they having been
alloted to his grandfather Mr.Srinivasan in a partition
between him and his brothers. The learned Counsel for
the plaintiff would further contend that the properties
purchased by his grandfather Mr.Srinivasan after the said

partition were purchased out of the income from the joint family properties and therefore, they should also be treated as joint family properties. On the strength of the above contention, the plaintiff who is the grandson of Mr.Srinivasan through one Kannan, who died in 1978 would seek 1/3rd share of the suit properties.

3.The suit is being resisted by the 1st defendant contending that there was a partition between the heirs of Mr.Srinivasan even before the death of Mr.Kannan and Mr.Kannan, himself have sold some of the properties allotted to him in the said partition. It is also claimed that the plaintiff who was a minor was also a party to the sale deed dated 02.08.1977, wherein the said Kannan as a guardian of the plaintiff has sold one item of the property to one Mythili under a registered sale deed. Therefore, according to the 1st defendant/applicant, the properties having been partitioned already, the plaint has to be rejected.

4.I am afraid, such a contention cannot be countenanced for the simple reason that in deciding an application under Order VII Rule 11 only the contents of the plaint must be looked into. The Court cannot indulge

<https://hcservices.ecourts.gov.in/hcservices/> enquiry as to the availability of properties based on the documents that has been produced by the

defendants. Such an approach is foreign to the scope of Order VII Rule 11 of CPC. If it is the case of the 1st defendant that the property has already been partitioned, it is open to him to prove the said partition in the manner known to law by producing evidence at trial. If this application is to be decided in the manner suggested by the learned counsel for the applicant it would involve assessing of documentary evidence which cannot be done while considering the application under Order VII Rule 11 of the Code of Civil Procedure. Hence, this application is dismissed.

Sd/.R.S.M.J.

05.02.2019

//Certified to be a true copy//

Dated this the th day of 2019.

DL/06.02.2019

COURT OFFICER

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

WEB COPY