

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	04.11.2019
Judgment Delivered on	18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH
and
THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLI

OSA No.391 of 2018

1.Mrs.Kasthurai
2.Mrs.Padmavathi
3.Mrs.Kamakshi : Appellants/D1 to D3

Vs.

1.Nagalakshmi
2.T.Mothi
3.T.Baba
4.T.Parthasarathy
5.Bhagyalakshmi : R1 to R5/Plaintiffs

6.Mrs.Jayalakshmi
7.Mrs.Parimalam
8.Mrs.Ranjani
9.Mrs.Sundar : R6 to R9/D4 to D7

Prayer: Original Side Appeal filed under Order 36 Rule 1 of Original Side Rules against the order passed in Application No.5313 of 2018 in C.S.No.777 of 2005 by rejecting the appellants contention to receive document No.1 copy of the oral partition document, dated 12.09.1997 and permit the appellants to produce document, dated 12.09.1997.

For Appellants : Mr.D.Rajagopal
For R1 to R5 : Mr.V.G.Suresh Kumar

J U D G M E N T

T.KRISHNAVALLI, J

This Original Side Appeal (OSA) is directed against the order passed in Application No.5313 of 2018 in C.S.No.777 of 2005 in rejecting the appellants' contention to receive document No.1, copy of the oral partition document, dated 12.09.1997 and permit the appellants to produce the document, dated 12.09.1997.

2.The respondents 1 to 5/plaintiffs filed the suit as against the defendants claiming partition of properties. The plaintiffs and defendants are closely related to each other. The father of the appellants/defendants 1 to 3, namely Late Ramachandran was the owner of the property bearing No.18, Arumugham Street, George Town, Chennai and has a share in the property bearing No.8, Venkatachalam Street, Triplicane, Chennai-5. After the death of the appellant's father, the appellants and other sisters along with their brothers Late R.Thiruvengadam and Late R.Narayanan, mutually entered into an oral partition, whereby the properties standing in the name of the appellant's father were allotted equally to the appellant's brother, namely Late R.Thiruvengadam and Late R.Narayanan and the property standing in the name of the appellants' mother, was allotted to the defendants 1 to 3 and accordingly, the property bearing Old No.31, New No.16, Audiappa Street, Purasaiwalkam, Chennai and another property bearing No.108, Butt Road Street, Thomas Mount, Chennai and the properties bearing No.1, Audiappa Street, Purasaiwalkam, Chennai and the share in the property bearing No.8, Venkatachalam Street, Triplicane, Chennai-5 were allotted to appellant's brothers, namely Late R.Thiruvengadam and Late R.Narayanan and this was given effect to and acted upon. Subsequently, after the death of the appellant's mother, the appellants' two brothers wanted some more shares and so the appellants and their sisters gave the property bearing No.34, Euopean Lane Street, St.Thomas Mount, Chennai to the appellants' brothers Late Thiruvengadam and Late R.Narayanan and pursuant to the oral partition, the list of properties allotted to them was reduced into writing and they put their signature in front of the appellants parents on 12.09.1997. The said document was misplaced in the appellants' house and inspite of due search, the appellants were not able to get the document, and so, the appellants filed an application to mark the copy of the said document.

3.The appellants filed A.S.No.5313 of 2018 before this court to permit them to produce the oral partition document reduced into writing and to mark the same. The learned Single Judge of this court permitted to mark the document Nos.3,4,5 and rejected document No.2 on the ground that the said document was already marked by the plaintiff and the learned Single Judge rejected the plea of the appellants to mark copy of the oral partition deed. Aggrieved by the said order, the appellants/defendants 1 to 3 are before this court.

4.Heard both sides and perused the materials available on record.

5.The appellants filed an application in Application No.5313 of 2018 seeking permission to mark 5 documents and the documents No.3 to 5 are accepted, but the document No.1 was not accepted and document No.2 was already marked by the plaintiff.

6.The learned counsel appearing for the appellants submitted that the properties standing in the name of the father of the deceased, were equally allotted to the plaintiffs as well as to the defendants and pursuant to the oral partition, the rest of the properties allotted to them were reduced into writing and all the parties to the oral partition put their signature in front of their parties and the oral partition was also given effect to and acted upon from that date and hence, to prove the oral partition, document No.1 is necessary and prays that the document No.1 may be accepted.

7.On a careful perusal of the document No.1, it is seen that it was not mentioned therein that on the basis of the oral partition, the properties were divided and hence, the above document cannot be considered as a basis for oral partition. In such circumstances, the document No.1 cannot be accepted. The reasons stated by the appellants are not at all acceptable. Hence, it is not necessary to interfere with the findings given by the learned Single Judge.

8.In the result, this OSA is dismissed. No costs.

Sd/-

Assistant Registrar(CS III)

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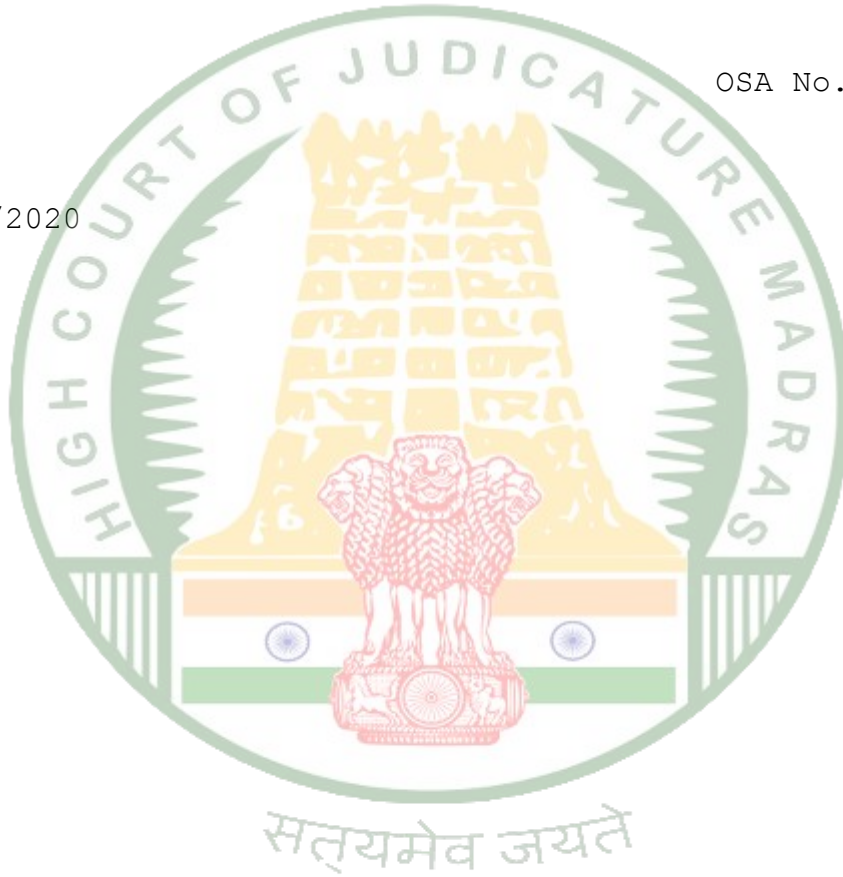
To

The Sub-Assistant Registrar,
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