

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 21.12.2020

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.91 of 2020

M.T.P.Mohamed Kunhi

.. Plaintiff

vs.

E.T.Rafeeq

.. Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 Code of Civil Procedure praying for the following judgment and decree against the defendant.

a) partitioning the suit schedule property “A” by metes and bounds and allot the plaintiff his one-third share therein;

b) appointing an Advocate Commissioner to Divide suit schedule Property “A” by metes and bounds and allocate the Plaintiff's one-third share mentioned in Schedule “B” Property exclusively for perpetual enjoyment of the plaintiff without any let or hindrance from the defendant or persons claiming a right through or under him;

c) to pay costs of the suit.

For Plaintiff : Mr.Perumbulavil Radhakrishnan

Defendant : Set exparte

J U D G M E N T

The suit has been filed for partition for dividing the suit schedule property 'A' by metes and bounds and allot one-third share to the plaintiff.

2.The brief facts of the case of the plaintiff is as follows:

(i) The case of the plaintiff is that the defendant and his wife were holding about 2.75 grounds of property and had required the plaintiff to purchase 1/9 undivided share in the lands in S.No.111 in Adayar Zamin Village, whereupon the said land would be used for the firm and the land shared equally by the partners. Accordingly, the plaintiff invested a sum of Rs.20 lakhs as required and the sharing as suggested by the defendant.

(ii) The defendant instead of purchasing the property in the name of the plaintiff, purchased the same in the joint name of the plaintiff and the

defendant vide sale deed dated 07.10.1993. The plaintiff states that the defendant had represented to the plaintiff that the remaining share would be purchased subsequently since the co-owners were living separately and sought more time to complete the transaction.

(iii) The plaintiff was not paid profits from the business. As the dispute arose between the parties, the matter was referred to arbitration and an award was passed on 29.04.1988 that the plaintiff was entitled to pay Rs.40 lakhs to the defendant within a period of six months from the date of award and the defendant was to pay a sum of Rs.4 lakhs as liquidated damages to the plaintiff within a period of six months and in the event of failure of payment, the defendant shall execute transfer of one-third undivided share of the properties. The defendant has not complied with the terms of the award.

3. Though paper publication was effected, none appeared for the defendant, hence, the defendant was set exparte by this Court on 14.10.2020.

4. On the side of the plaintiff, the plaintiff was examined himself as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	24.04.1993	Photocopy of Partnership deed between the plaintiff and defendant.
2.	P-2	06.02.1992	Photocopy of sale deed executed by Hindustan Engineering Training Centre in favour of defendant's wife registered as document No.455 of 1992 at SRO, Adayar.
3.	P-3	06.02.1992	Photocopy of sale deed executed by Hindustan Engineering Training Centre in favour of the defendant
4.	P-4	03.02.1992	Photocopy of sale deed executed by Hindustan Engineering Training Centre in favour of the defendant
5.	P-5	29.04.1998	Copy of award between the plaintiff and defendant.
6.	P-6	11.10.2017	Photocopy of sale deed executed by First Assistant Registrar, Original Side, High Court, Madras for and on behalf of the defendant to in favour of the plaintiff registered as

S.No.	Exhibits	Date	Description
			Document No.2673 of 2017.
7.	P-7	12.10.2018	Original Encumbrance Certificate for the period 01.01.1987 to 11.10.2018 given by Office of SRO, Adayar, Chennai-20.

5. Heard the learned counsel for the plaintiff and perused the records.

6. P.W.1, in his evidence has filed his proof affidavit.

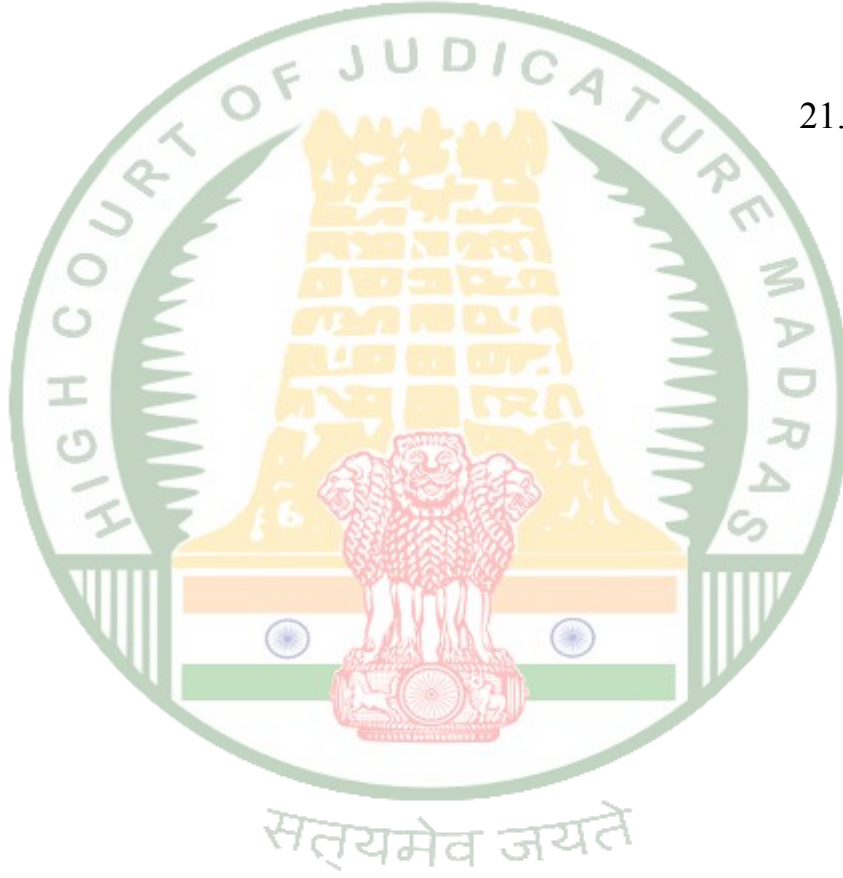
7. The original sale deed has been filed before this Court to show that the sale deed has been executed in favour of the plaintiff in respect of the 1/3rd share and award has also been passed under Ex.P5 between the plaintiff and the defendant.

8. On perusal of the sale deed executed by this Court in Execution Proceedings, the plaintiff has already become owner of the 1/3rd share in Schedule 'A' property. As there is no metes and bounds, the partition is required thereby preliminary decree is passed dividing the property and allot 1/3rd share to the plaintiff since he has already become owner of the property as per the sale deed dated 11.10.2017. No costs.

9. At request of the learned counsel for the plaintiff, Registry is directed to return the original sale deed dated 11.10.2017 after making an endorsement in the white copy.

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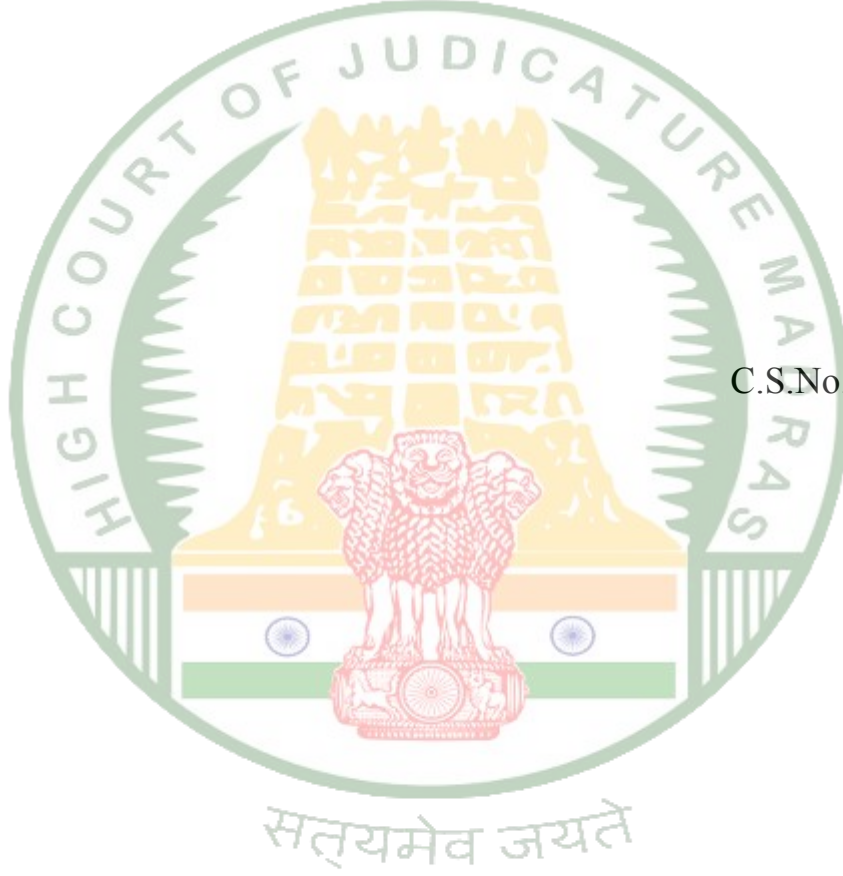


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