

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.10.2020

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.S.No.505 of 2012

M.Shanthi

... Plaintiff

Vs

1.M.Umashankar
2.M.Thanigaivelu
3.M.Duraibabu
4.R.Thenmozhi
5.M.Banumathi
6.Merit Book House,
Rep. by its Authorised Signatory,
A.P.642, 49th Street, 9th Sector,
K.K.Nagar,
Chennai - 600 078.

... Defendants

Prayer: Suit under Order IV Rule 1 of O.S. Rules of High Court Madras read with Order VII Rule 1 C.P.C., 1908, praying for a judgment and decree against the defendants (a) for partition by metes and bounds of Schedule "A" to Schedule "E" properties and hand over physical vacant possession of the 1/6th share of each property; (b) Directing the defendants 1 to 3 to render a true and proper accounts the affairs of the 6th defendant from the date of death of N.Manickam, i.e.,

03.08.2010 and also value the goodwill of the 6th defendant and hand over 1/6th share; (c) directing the defendants 1 to 3 to pay the plaintiff 1/6th of the amount lying in fixed deposit with State Bank of India, K.K.Nagar Branch and Indian Bank, M.G.R.Nagar Branch and Rs.1.5 lakhs in fixed deposit with Royapettah benefit fund; (d) costs of the suit.

For Applicant :M/s.A.S.Kailasam and Associates

For Respondents :Mr.A.H.Srikanth

ORDER

The above suit is filed for the following reliefs:

"a. For partition by metes and bounds of Schedule "A" to Schedule "E" properties and hand over physical vacant possession of the 1/6th share of each property;

b. Directing Defendants 1 to 3 to render a true and proper accounts the affairs of the 6th defendant from the date of death of N.Manickam, i.e., 03.08.2010 and also value the goodwill of the 6th defendant and hand over 1/6th share;

c. Directing the defendants 1 to 3 to pay the plaintiff

1/6th share of the amount lying in Fixed Deposit with State Bank of India, K.K.Nagar Branch and Indian Bank, M.G.R Nagar Branch and Rs.1.5 lakhs in Fixed Deposit with Royapettah Benefit Fund;

d. Costs of the suit."

2. It is the case of the plaintiff that she and defendants 1 to 5 are siblings and children of late N.Manickam and late Baby Manickam. The said Manickam was employed as Manager in India Book House for a long time and in and around the year 1997-1998, he had started his own book shop under the name and style of "Merit Book House", which has been arrayed as the 6th defendant herein. This business was doing extremely well and earned huge revenue. Out of this, the said Manickam had purchased the suit 'A' schedule property under the sale deed bearing Document No.1464/1985, on the file of the Virukambakkam from the Tamil Nadu Housing Board. He had constructed a palatial house consisting of a ground plus 2 floors, each floor measured an extent of 1800 sq.ft., built up area or thereabouts and the total constructed area was about 5400 sq.ft.

2. The plaintiff's mother was a school teacher and she had purchased the "B" schedule property under document No.3481 of 1988 on the file of the SRO, Virugambakkam and she also constructed a ground plus 2 floor building thereon. Each floor consisted of 800 sq.ft., before constructed area of 2400 sq.ft.

3. The plaintiff would further submit that her father along with his brother had constituted a Hindu Undivided Family and there was a partition amongst them on 28.04.1994, which was reduced into writing and the partition deed of the said date was registered as Document No.1810 of 1994, on the file of the SRO, Pammal and the "D" schedule property herein fell to the share of her father.

4. The plaintiff father had purchased the piece of land, which is described in the "C" schedule to the plaint under sale deed dated 26.07.1972, registered as Document No.987 of 1972, likewise, the plaintiff's mother Baby Manickam had purchased another plot measuring one ground 1150 sq.ft near Tambaram under sale deed

dated 09.05.1965, bearing Document No.1512 of 1965, on the file of the SRO, Tambaram. This property has been described as Schedule "E".

5. The plaintiff would submit that the "A" schedule property is a valuable property and the first floor has been rented out by the second defendant and the same is fetching a monthly rent of Rs.13,500/-. The ground floor is being used by the 3rd defendant as the office for the 6th defendant and the second floor is being used by first defendant as his residence and office for Gayathri Constructions. The plaintiff's mother had leased out the ground floor in schedule "B" to the plaintiff on condition that the plaintiff deposits a sum of Rs.1,00,000/- with her mother and the interest therefrom will be adjusted towards rent and as and when lease is terminated, a sum of Rs.1,00,000/- became payable to the plaintiff. A written letter of agreement was entered into between the plaintiff and her mother in this regard. This letter was witnessed by her father. The first floor of the building was leased out by the 4th defendant to third parties and she is earning a rent of Rs.6,000/- per month. The second floor is kept under lock and key.

The "C", "D" and "E" schedule properties are lying vacant .

6. Baby Manickam, the plaintiff's mother died intestate on 15.02.2007 and N.Manickam followed her on 03.08.2010.

7. Therefore on the death of the parents, the plaintiff and defendants 1 to 5 each became entitled to 1/6th share in the suit "A" schedule properties.

8. The 6th defendant is a proprietary concern belonging to N.Manickam and on his death, all the legal heirs would be entitled to a share in the business. The plaintiff has also given the details of the fixed deposit lying to the credit of her father. The plaintiff would submit that her husband has made a oral demand for partition and enraged by such demand, the first defendant has physically assaulted the plaintiff's husband, as a result of which, the police complaint was lodged and the first defendant was warned. After the death of her father, the plaintiff and the 4th and 5th defendants were demanding a partition. But, however, the defendants 1 to 3, who are the brothers

refused to comply with the requests, the legal notice dated 04.10.2011, issued by the plaintiff also did not evoke any response. Therefore, left with no other alternative, the plaintiff is constrained to file the instant suit. It appears from the notes sheet that several attempts have been made to settle the dispute between the parties, which had ended in failure. The defendants 1 to 4 and 6 were set ex-parte by order dated 16.07.2019 and it was only the 5th defendant who had filed a written statement along with the counter claim, seeking a decree of partition in respect of her 1/6 th share in the suit properties. The parties have also gone to trial, this despite the fact that the 5th defendant also demanded her 1/6th share. The plaintiff was also cross examined by the learned counsel for the 5th defendant. The plaintiff had examined herself as PW.1 and had marked the following documents:

Sl.No		Description of Documents
1	Ex.P1	The photocopy of the sale deed dated 09.05.1965, DOC.No.1512/1965 in favour of Baby Manickam.
2	Ex.P2	The photocopy of the sale deed dated 27.07.1972 in favour of Manickam, Doc.No.987 of 1972.
3	Ex.P3	The photocopy of the sale deed dated 27.05.1985

Sl.No		Description of Documents
		in favour of N.Manickam, DOC.No.1464 of 1985.
4	Ex.P4	The photocopy of the sale deed dated 21.09.1988 in favout of Baby Manickam, Doc.No.3481/1988.
5	Ex.P5	The photocopy of partition deed dated 28.04.1994 between N.Manickam and his brother Doc.No.810/1994.
6	Ex.P6	The photocopy of the receipt dated 12.07.2002 issued by Baby Manickam for Rs.1.0 lakhs in favour of the plaintiff.
7	Ex.P7	The photocopy of the death information certificate dated 03.08.2010 issued by Isabels Hospital.
8	Ex.P8	The photocopy of the death certificate dated 16.08.2010 issued by the Corporation of Chennai.
9	Ex.P9	The photocopy of the Legal Heirship Certificate dated 22.10.2010 issued by the Tahsildar, Mambalam, Guindy Taluk.
10	Ex.P10	The photocopy of the plaintiff's husband's complaint to Inspector of Police, K.K.Nagar, dated 15.03.2011.
11	Ex.P11	The photocopy of the Acknowledgment issued by K.K.Nagar Police Station, dated 15.03.2011.
12	Ex.P12	The photocopy of the Advocate's notice issued to the 1st to 3rd defendants dated 04.10.2011.
13	Ex.P13	A photocopy of the Postal Acknowledgment (1 No.) and Returned covers (2 Nos.).

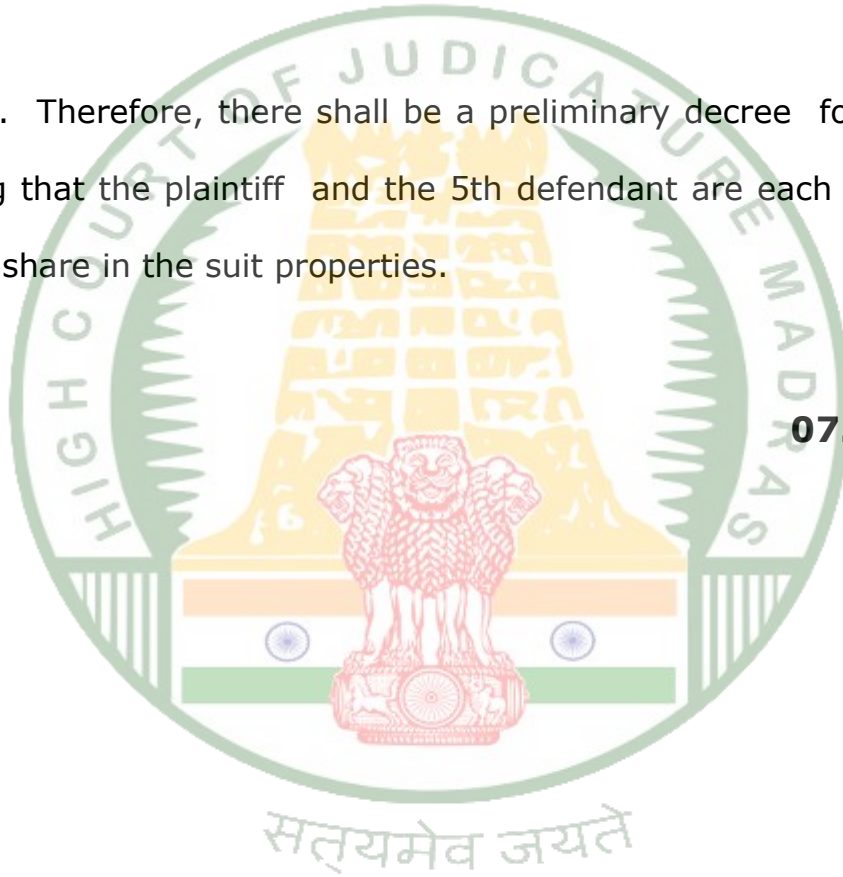
9. Since, it was represented on behalf of the 5th defendant that they did not have any oral evidence to adduce on their side, the learned Master has directed the matter to be listed before this Court

for hearing arguments. Today, when the matter was called, the learned counsel for the 5th defendant would submit that she has no objection to the suit being decreed and the plaintiff would also submit that she has no objection to the counter claim being decreed.

10. Therefore, there shall be a preliminary decree for partition declaring that the plaintiff and the 5th defendant are each entitled to a 1/6th share in the suit properties.

07.10.2020

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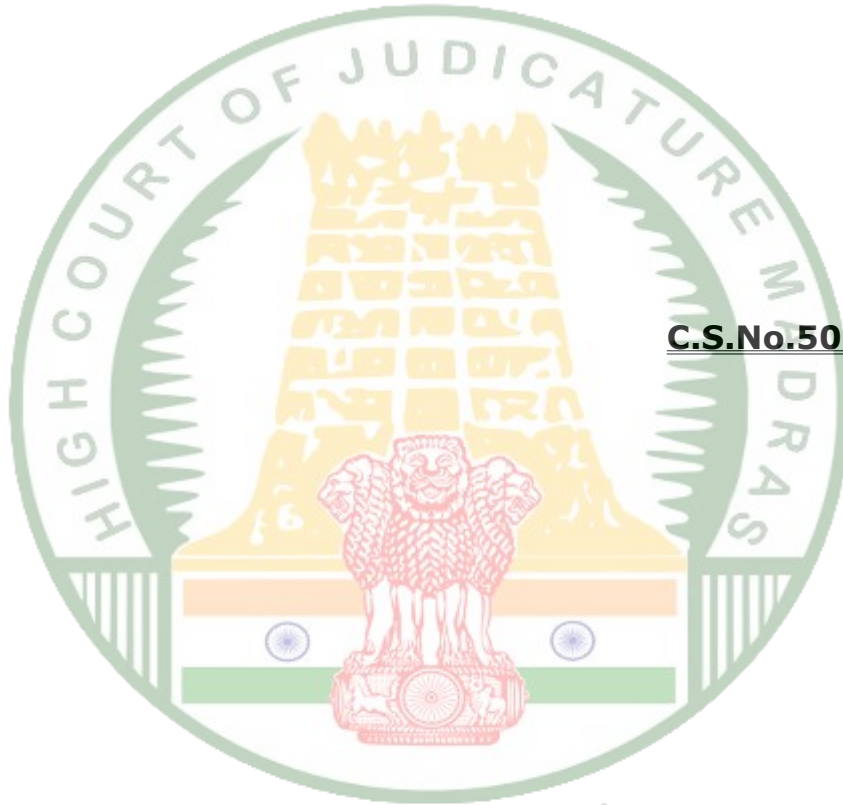


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