

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 30.11.2020

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.615 of 2015

1. Mrs.A.Kala

2. Mr.V.A.Siva Palani

.. Plaintiffs

vs.

Mr.V.A.Nagarathinam

.. Defendant

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

a) To pass preliminary decree and judgment for division of the plaint schedule property into 3 equal shares by metes and bounds and to allot 2/3rd share to the plaintiffs herein as per the conventions and customs prevails as per Partition Act;

b) for appointment of Advocate Commissioner to divide the plaint schedule mentioned property by metes and bounds and allotment of 2/34d share to the plaintiff and for separate possession thereof;

c) for a permanent injunction restraining the defendant, his men, agents, servants or anybody else claiming through or under him in any manner from alienating, mortgaging or selling his share over the suit property to any third parties;

d) To pay the cost of the suit;

For Plaintiffs : Mr.S.Rajendran

For defendant : Mr.V.Saranraj

JUDGMENT

The suit is filed for partition for dividing the suit property into three equal shares and allot two such shares to the plaintiffs and for permanent injunction.

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2. The brief facts of the case of the plaintiffs are as follows:

The plaintiffs and the defendant are the daughter and sons of one Arunachalam. The property was originally purchased by the said Arunachalam and he died leaving the plaintiffs and the defendant as his legal heirs. The mother of the plaintiffs and the defendant died subsequent to the death of their father. The mother of the parties has already relinquished her rights in the property to her children.

3. The learned counsel for the defendant submitted the defendant is also willing for partition and he is entitled to 1/3rd share in the property and the suit may be decreed by allotting 1/3rd share in the suit property to the defendant.

4. This Court by Order dated 07.10.2020 also recorded the admission of the defendant for partition.

5. It is admitted by both sides that originally some sort of settlement has been arrived between the parties and draft partition deed has also been exchanged between the parties and the same could not be acted upon as the

kitchen and bathroom in the portion allotted to the plaintiff could not be shifted by the defendant. Therefore, the draft partition deed has not been acted upon. However, there is no dispute with regard to the shares of the property. As there is no dispute over the shares of the property, this Court can pass a judgment as per Order XII Rule 6 of Code of Civil Procedure.

6. Accordingly, a preliminary decree is passed for partition of the suit property into three equal shares and allot two such shares to the plaintiff and the defendant is entitled to the remaining one share and his share will be allotted on payment of Court Fee as required under law. Considering the relationship between the parties, there shall be no Order as to cost.

30.11.2020

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N.SATHISH KUMAR, J

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