

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 13.10.2020

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.576 of 2016

1. Mrs.Malliga, W/o/Late Venkateswara Rao
2. Mrs.Grahalakshmi, W/o.Mr.G.Bhaskaran
3. Mrs.D.Swarnalatha, W/o.Mr.Gokulakrishnan .. Plaintiffs

vs.

Mr.R.Udayakumar, S/o.Late R.Radhakrishnan .. Defendant

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

a) To pass preliminary decree for partition each 1/4th share plaintiff schedule property in the Plot No.4398, Old Door No.35, New Door No.19, First Street, W Block, Anna Nagar, Chennai – 600 040, comprised in T.S.No.57, Block No.1 of Periyakodal Village measuring an extent of 2403 sq.ft. which is morefully described in the schedule hereunder by metes and

bounds and pass final decree by allotting each 1/4th share in the said property to the plaintiffs herein;

b) Directing the defendant to render true and correct accounts in respect of the rental income and profits received and enjoyed from the suit property all these years since 14.05.2016 and pay the plaintiffs their 1/4th share till the date of realization;

c) directing the defendant to pay mesne profits to the plaintiffs being 1/4th of his share in respect of the suit property.

d) costs of the suit;

For Plaintiffs : Mr.N.V.Prakash

For defendant : No appearance

JUDGMENT

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

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

The case of the plaintiffs is that that plaintiffs and the defendant are daughters and son of one Radhakrishnan. The said Radhakrishnan purchased the suit property. The father of the parties died intestate on 14.05.2016. Despite request made by the plaintiffs, the defendant has not come forward for amicable partition. Hence, the suit.

3. Though several opportunities were given to the defendant to cross examine P.W.1, the defendant has not cross examined P.W.1 and hence, the defendant was set exparte by this Court on 07.11.2019.

4. On the side of the plaintiffs, the first plaintiff was examined himself as P.W.1 and Ex.P.1 to Ex.P.9 were marked.

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	09.03.1999	Copy of legal heirship certificate of the plaintiffs' mother
2.	P-2	05.07.1991	Certified copy of the sale deed executed by Tamilnadu Housing

S.No.	Exhibits	Date	Description
			Board in favour of father of the plaintiffs as document No.3375/1991
3.	P-3	06.02.2003	Certified copy of the sale deed executed by the father of the plaintiffs in favour of one Megala Anand as Document No.412/2003
4.	P-4	14.05.2016	Copy of death certificate of plaintiffs' father
5.	P-5	13.06.2016	Copy of legal notice issued by the plaintiff's to the defendant
6.	P-6	--	Acknowledgment card of defendant for the notice issued by plaintiffs
7.	P-7	27.07.2016	Encumbrance Certificate
8.	P-8	03.02.2011	Copy of letter of plaintiffs' father's diary extract (compared with original)
9.	P-9	--	Copy of Burial Ground Report of plaintiffs' father (Compared with original)

Witnesses examined on the side of the plaintiffs:

P.W.1. - Mrs.Malliga

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

6. P.W.1, in her evidence has spoken about the purchase of the

property by her father. Ex.P.2 Sale Deed has been marked to show that the property has been purchased by her father. Ex.P.2 property was originally allotted to her father and on 05.07.91 sale deed has been executed by the Tamilnadu Housing Board in favour of the plaintiffs' father. During his life time, the father of P.W.1 sold an extent of 972 sq.ft. out of one ground to one Megala vide Ex.P.4. A copy of the death certificate of P.W.1's father has been filed to show that her father died on 15.05.2016. Ex.P.1 legal heirship certificate has been filed to show that the plaintiffs and the defendants are the legal heirs of Mr.Sulochana, wife of Radhakrishnan and mother of the plaintiffs and the defendant.

7. From the evidence of P.W.1 and the documents filed, it is proved that the suit property is the absolute property of the father of the parties and Ex.P.8 substantiate the same. The documents filed by the plaintiffs establish the fact that the plaintiffs and the defendant are Class – I legal heirs of the said Radhakrishnan. Hence, the plaintiffs and the defendant are entitled to equal share in the property. The evidence of P.W.1 and documents filed on behalf of the plaintiffs remain unchallenged and there is

no rebuttable evidence against the case of the plaintiffs. Hence, the plaintiffs have proved their case.

8. In the result, a preliminary decree is passed for partition of the suit property into four equal shares and allot $\frac{1}{4}$ to each of the plaintiffs.

13.10.2020

vrc



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N.SATHISH KUMAR, J

VTC



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