

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 14TH DAY OF DECEMBER 2020

THE HON'BLE MR. JUSTICE N.SATHISH KUMAR

A.No.2674 of 2020

in

C.S.No.142 of 2019

1. P.S.M.T.Hameed Nazrutheen

S/o. Late Thamthasin

2. K.M.S.B.Fathima Gani

W/o. P.S.M.T.Hameed Nazrutheen

3. Narkish Banu

D/o. P.S.M.T.Hameed Nazrutheen

4. Khaja Nizammudeen

S/o. P.S.M.T.Hameed Nazrutheen

5. Shakila Banu,

D/o. P.S.M.T.Hameed Nazrutheen

6. Mohammed Niyas

S/o. P.S.M.T.Hameed Nazrutheen

All are residing at No.2/31,  
Coats Road, 1st Floor, T.Nagar,  
Chennai 600 017.

: Applicants/Plaintiffs

Vs.

1. P.S.M.T.Syed Abdul Rahman

S/o. Late Thamthasin

2. P.K.M.S.Ameena Beevi

W/o. P.S.M.T.Syed Abdul Rahman

3. Jamila Beevi  
D/o. P.S.M.T.Syed Abdul Rahman

4. Sheik Meera,  
S/o. P.S.M.T.Syed Abdul Rahman

5. Syed Ibrahim  
S/o. P.S.M.T.Syed Abdul Rahman

6. Sharmila Banu,  
D/o. P.S.M.T.Syed Abdul Rahman

7. Mohamed Haja Rizwan,  
S/o P.S.M.T.Syed Abdul Rahman,

All are residing at  
No.2/31, Coats Road, Ground Floor,  
T.Nagar, Chennai 600 017. .Respondents/Defendants

Application praying that this Hon'ble Court be pleased to grant an interim preliminary decree, declaring the 1<sup>st</sup> applicant's half share in Item Nos.1, 2, 3, 5 and 7 of the suit scheduled mentioned properties.

This Application coming on this day before this court for hearing, the court made the following order:-

The suit has been filed seeking partition of the half share of the first applicant.

2. It is the contention of the learned counsel for the applicants that in the suit property Items 1 to 3 were purchased by father and Items 5 and 6 were purchased by both plaintiff and first defendant jointly. Hence, the suit

3. During the pendency of the suit, an application were also taken out for injunction restraining the respondents from disturbing the common amenities etc. The counter was filed. Now, the present application has been filed for passing a Preliminary Decree based on the admission made by the first defendant in respect of Item nos.1,2,3,5 & 7.

4. Whereas the learned counsel appearing for the respondents and stand of the first respondent in the above application is that Item 1 and 2 are commercial properties and Item 3 is the residential property. After the death of the father in the year 2016, there was a partition and 3 floors were allotted. The ground floor was allotted to the first defendant and other portions were allotted to the applicants herein. However, it is submitted that as far as 5 and 7 are concerned, it is left to discretion of the Court. Though, much reliance has been placed by the learned counsel for the first respondent / first defendant that since the partition is pleaded merely on the basis of some admission in the counter filed in O.A.Nos.165 to 167 of 2019, those admissions cannot be taken as positive assertion to pass a Preliminary Decree. It was pleaded in the above application about the partition of the property. Therefore, whether or not there was a partition has to be tested

only in the trial and not in this application. Hence, prayed for dismissal of

the application.

5. Heard both sides and perused the application.

6. This application is filed seeking a Preliminary Decree on admission in respect of Items 1,2,3,5 and 7. It is not disputed by both sides that Items 1 to 3 were purchased by the father of the plaintiff and first defendant. Similarly, Items 5 and 7 were is also purchased by plaintiff and first defendant in their joint name. This fact is not in dispute. Plaint documents also prove the same. In the counter filed in O.A.Nos.165 to 167 of 2019, in Para 3, it is specifically admitted by the first defendant that the Old Door No.12, New Door no.2/31 purchased by their father is a residential house and similarly, in Para 10, it is admitted that as the relationship between the parties are very cordial, they jointly contributed funds for the purchase of property. In Para 22 of counter filed in O.A.Nos.165 to 167 of 2019, it is clearly admitted by the first defendant that there is no joint family property in existence between himself and applicant and whatever the properties jointly purchased or jointly inherited have to be shared jointly among themselves and the properties purchased individually have to be individually enjoyed by the parties. It is also stated that as far as

right for claiming the partition in respect of the properties purchased by them and vice versa. It is his admission that whatever the properties purchased in the name of the father and plaintiff and first defendant jointly it has to be shared equally between them.

7. Therefore, this Court is of the view that when the assertion is made by the first defendant as to the nature of the purchase and the share by the brother, there is no need to send this matter for trial. The parties need not undergo the ordeal of the trial as far as the admitted share in respect of the certain properties. Though, it is contended by the first respondent that in the year 2006, after the death of the father, the partition has been effected between them, when the Court has posed a question as to the mode of partition. It is submitted that it was only an oral partition. However, in the entire pleadings there is no whisper as to the date on which the oral partition took place. It is also noted that any property allotted orally, if the property is valued more than Rs.100, it requires compulsory registration otherwise such partition is not valid in the eye of law. Therefore, when such shares have been admitted, this Court finds no difficulty in granting a decree on the basis of the positive admission by first defendant. Accordingly, a Preliminary Decree is passed dividing the suit property namely Items 1 to 3

and remaining half share shall be allotted to the first defendant and as far as Items 4 and 6, admittedly they are purchased in the name of the first defendant. Though, it is the contention of the plaintiff that he has also contributed for the above purchase, it is a matter for evidence. Therefore, as far as Items 4 and 6, the suit shall continue and it has to go for trial, for filing written statement in respect of Items 4 & 6.

8. Accordingly, the application is ordered on the above terms. Post the matter on 11.01.2021, for filing written statement.

Sd./-N.S.K.J.  
14.12.2020

//Certified to be true copy//

Dated at Madras this the      day of      2021.

COURT OFFICER(O.S.)

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JJ 04/01/2021

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