

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved Date : 05.01.2021

Pronounced Date : 05.02.2021

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

C.S.No.742 of 2011

1. Jayanthi

2.G. Logeswari

3.Minor. G.Lakshmi Priya

Represented by her mother and
natural guardian / Jayanthi

Plaintiffs

Vs.

1.S.Somalingam

2.S.Chidambaram

Defendants

Prayer: The Civil Suit filed under Order IV Rule 1 O.S.Rules r/w Order VII Rule 1 of C.P.C., praying for

(a) to pass preliminary decree for partition by metes and bounds and allot 1/3 share to the plaintiffs jointly;

b) to appoint an Advocate Commissioner to effect partition by metes and bounds;

c) to pass final decree in terms of the preliminary decree as well as the Commissioner's Report and

d) costs of the suit.

For Plaintiffs : Mr.U.Karunakaran

For Defendants : Mr.P.Chandrasekaran

JUDGMENT

This suit has been filed to divide the suit properties into three equal shares and allot one such share to the plaintiffs.

2. The averments made in the plaint are in brief as follows:-

a) One Mr.C.Subbiah and Tmt.Pappammal had 3 sons namely i) S.Somalingam (first defendant) ; ii) Mr.S. Chidambaram (2nd defendant) and iii) Mr.Ganeshmurthy (husband of the first plaintiff and father of the plaintiffs 2 and 3) and 4 daughters namely i) Tmt.Vasanthakokila, ii) Tmt. Sorojini, iii) Tmt. Krishnaveni and 4) Tmt. Malathi.

b) The said Pappammal had purchased a house site of the suit property under a registered sale deed dated 22.01.1969 and thereafter constructed a building thereon. The said Pappammal died intestate on 12.09.2003 leaving behind 3 sons and 4 daughters and husband as her legal

heirs as stated above. After the death of the said Pappammal, her second son namely Ganeshmurthy died on 02.12.2005 leaving behind his wife (first plaintiff) and 2 daughters (plaintiffs 2 and 3) as his legal heirs. After the death of the said Pappammal, her husband C.Subbiah and her 4 daughters had relinquished their rights over the suit property and hence, they have not been added as parties. The other surviving legal heirs of Pappammal namely the defendants 1 and 2 and Ganeshmurthy were entitled to 1/3rd share each in the suit property. Since the said Ganeshmurthy died leaving behind the plaintiffs as his legal heirs, the plaintiffs are entitled to 1/3rd share.

c) The plaintiffs and the defendants are in joint possession of the suit property. The plaintiffs made a request to the defendants for amicable partition but they have not come forward for amicable partition. Hence, the plaintiffs had sent a lawyer's notice dated 24.09.2010 seeking partition. After receipt of the notice, the first defendant alone had sent a reply notice with false allegations. Hence, the plaintiffs had sent a rejoinder to the reply notice of the first defendant. The first defendant had received the same, but

he did not come forward for amicable partition. Hence, the plaintiffs were constrained to file the suit for partition.

3. The averments made in the written statement filed by the second defendant and adopted by the first defendant are in brief as follows:

The suit property was purchased by the defendants' father C.Subbiah in the name of his wife Pappammal. The suit is bad for non-joinder of daughters of the said C.Subbiah as defendants. A major portion of the rental amount collected from the tenants was given to the first plaintiff to meet her daughters' education expenses. It is false to state that the plaintiffs approached the defendants seeking partition. The property situated at Alamathi Village, Ponneri Taluk, Thiruvallur District "Sri Supertec Castings" were purchased in the name of the first plaintiff's husband out of the income of the joint family and hence, the said properties also should be included in the suit and therefore, the defendants prayed to dismiss the suit.

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4. Based on the aforesaid pleadings, the following issues were framed for trial:

“1. Whether the plaintiffs are entitled to 1/3rd share of the suit property as claimed for?

2. Whether the suit is bad for non-joinder of necessary parties?

3. Whether relinquishment to partition by the sisters are correct and valid?

4. To what other reliefs, the parties are entitled to?”

5. During trial, on the side of the plaintiffs, the first plaintiff was examined as PW1 and marked 10 exhibits as Exs.P1 to P10. On the side of the defendants, the first defendant was examined as DW1 and second defendant was examined as DW2. No exhibits were marked on the side of the defendants.

6. Heard Mr.U.Karunakaran, learned counsel for the plaintiffs and Mr.P.Chandrasekaran, learned counsel for the defendants.

7. Issue Nos.2 and 3:

According to the plaintiffs, the suit property was purchased by one Pappammal as vacant site under a registered sale deed dated 22.01.1969 and thereafter, she constructed a building thereon. Though the defendants in their written statement took a plea that the said property was purchased by their father C.Subbiah in the name of his wife Pappammal, they have not produced any documentary evidence to show that the suit property was purchased by their father C.Subbiah in the name of Pappammal. Ex.P1 (Registration copy of the sale deed dated 22.01.1969) shows that the said Pappammal had purchased the suit property as vacant site. So, it is clear that it was only the said Pappammal had purchased the suit property as vacant site and thereafter, she constructed a building thereon.

8. The plaintiffs pleaded in their plaint that after the death of Tmt.Pappammal, her husband C.Subbiah and her daughters had relinquished their rights over the suit property. To substantiate the said plea, the plaintiffs have filed a registration copy of the release deed executed by the said C.Subbiah and his daughters in favour of his sons dated 09.09.2005

and marked as Ex.P4. The defendants 1 and 2 while examining themselves as DW1 and DW2 also admitted in their evidence that their sisters and their father had relinquished their rights over the suit property through Ex.P4 release deed. Therefore, it is clear that the daughters of the said C.Subbiah and Pappammal had already relinquished their rights over the suit property and that being so, they need not be added as defendants. Accordingly, these issues are answered in favour of the plaintiffs.

9. Issue No-1:-

According to the plaintiffs, Pappammal was the owner of the suit property and she died intestate leaving behind her husband and 3 sons and 4 daughters. Their further case is that after the death of the said Pappammal, the husband of the said Pappammal and her daughters had relinquished their rights over the suit property by executing Ex.P4 release deed and therefore, only 3 sons of the said Pappammal are entitled to the suit property. The defendants 1 and 2 while examining themselves as D.Ws 1 and 2 have admitted in their evidence that the sons of the said Pappammal are each entitled to 1/3rd share in the suit property. There is no dispute that the

plaintiffs are the legal representatives of the deceased son Ganeshmurthy and as such, the plaintiffs are entitled to 1/3rd share in the suit property. Accordingly, this issue is answered in favour of the plaintiffs.

10. Issue No.4:-

No other reliefs to be granted in this suit.

11. In the result, a preliminary decree is passed to divide the suit property into 3 equal shares and allot one such share to the plaintiffs. The defendants are directed to pay the costs of the suit to the plaintiffs.

05.02.2021

Index: Yes/No

Speaking/ Non-speaking Order

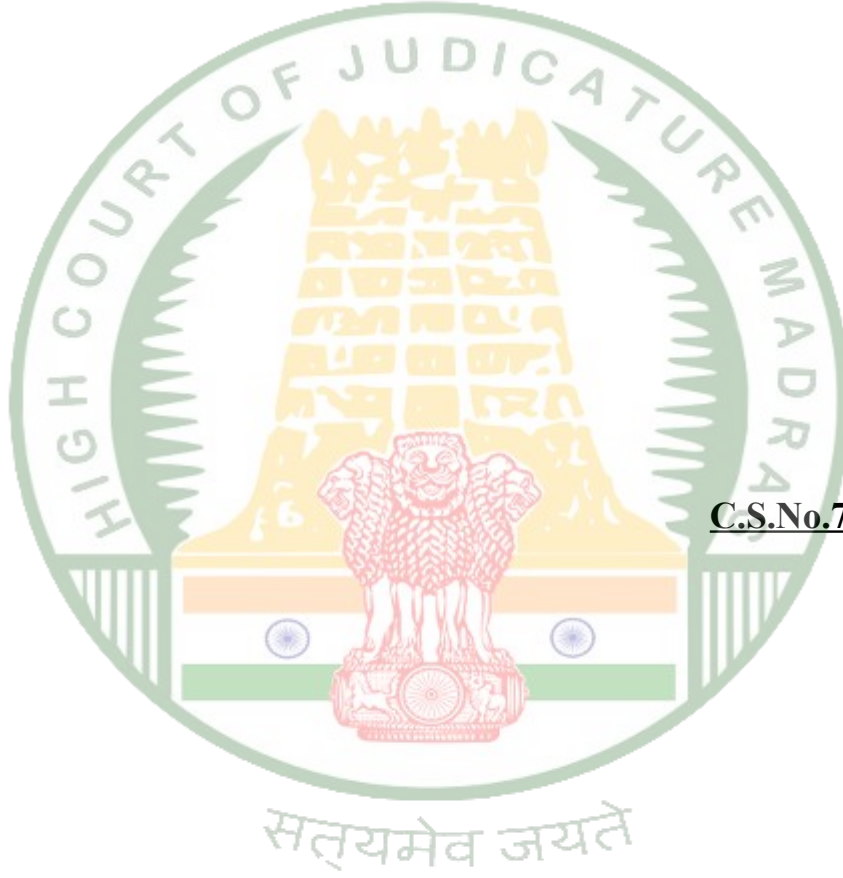
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P. RAJAMANICKAM, J.

gv



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