

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 24TH DAY OF MARCH 2021

THE HON'BLE MS. JUSTICE P.T.ASHA

C.S.No.1047 of 2008

And

A.No.7177 of 2018

C.S.No.1047 of 2008 & A.No.7178 of 2018:-

1. S.Rampprasadh,
S/o.Late R.S.Srinivasan,
 2. Jailakshmi Srinivasan,(Deceased)
W/o.Late R.S.Srinivasan,
Both Are Residing At:
Old No.21, New No.44,
First Floor, Bhagirathi Ammal Street,
T.Nagar, Chennai – 600 017.
(1st plaintiff as the legal representative of the
2nd plaintiff as per order dated 25.10.2021
on memo dated 02.02.2021) ...Applicants/Plaintiffs
- Vs
1. S.Shivpprasadh,
S/o.Late R.S.Srinivasan,
 2. Ramraj,
Both are residing at:
Old No.21, New No.44,
Second Floor, & First Floor respectively
Bhagirathi Ammal Street,
T.Nagar, Chennai – 600 017.
 3. Padma Ramasubramaniam,
W/o.R.S.Ramasubramaniam,
A2/7, Vishal Mitra Cooperative Housing Society,
Pragriti Nagar, Goregoan West, Bombay – 62.
 4. Kamala Ramprasad,
W/o.Ramprasad,

1,2 & 4 Are Residing At:
 Old No.21, New No.44,
 First Floor, Bhagirathi Ammal Street,
 T.Nagar, Chennai – 600 017.
 (3 and 4 impleaded as per order

dated 26.03.2010 and further
 extended by Order dated 05.07.2010
 in Application No.615 of 2009)

...Respondents/Defendants

C.S.No.1047 of 2008:-

Civil Suit Praying that this Hon'ble Court be pleased to pass a judgment and decree (a) For partition of the 'A' schedule-mentioned property into nine equal shares and allot $\frac{4}{9}$ th share to the 1st plaintiff $\frac{1}{9}$ th share to the second plaintiff (in all $\frac{5}{9}$ th share to the plaintiff's) taking into account all the facts pertaining to the location and value of the 'A' schedule-mentioned property by appointing an Advocate commissioner;

(b) For partition of the 'B' schedule-mentioned businesses into three equal shares and allot $\frac{1}{3}$ rd share to the 1st plaintiff $\frac{1}{3}$ rd share to the second plaintiff (in all $\frac{2}{3}$ rd share to the plaintiffs) taking into account all the facts pertaining to the value of the 'B' schedule-mentioned businesses by appointing an Advocate commissioner;

(c) Directing the 1st first defendant to render proper accounts of the rental collections form ground floor portion of the 'A' schedule property and the income from the 'B' schedule businesses;

(d) for permanent injunction restraining the first defendant, his agents, servants and men and everyone claiming under them or acting on his behalf from in any way alienating or encumbering the 'A' schedule mentioned property without giving the plaintiffs their 5/9th share by metes and bounds;

(e) For a mandatory injunction directing the second defendant to deposit the monthly rent into the credit of the suit subject to further orders of the court;

(f) Directing the 1st first defendant to pay costs of this suit.

A.No.7177 of 2018:-

Application praying that this Hon'ble Court be pleased to pass a final decree as per the terms of the preliminary decree dated 02.01.2018 passed in the above suit C.S.No.1047 of 2008 by dividing the 'A' schedule mentioned property into two parts; 5/9th share to the plaintiffs and 4/9th share to the 1st defendant and allotting the 5/9th share to the plaintiff in the 'A' schedule property by metes and bounds with vacant possession;

This suit and application along with C.S.No.1046 of 2008 and A.No.7178 of 2018 coming on this day before this court for hearing in the presence of Mr.C.Jagadish, Advocate for the plaintiff in C.S.No.1047 of 2008 and for the applicant in A.No.7177 of 2018 and the

1st defendant herein appearing in person and upon reading the plaint filed in C.S. No.1047 of 2008 and the order dated 29.10.2020 made in C.S.No.1046 and 1047 of 2008 and A.Nos.7177 & 7178 of 2018 and the preliminary decree dated 02/01/2008 made in C.S.Nos.1046 & 1047 of 2008 and the memo dated 16.03.2021 and the partition deed signed by the 1st plaintiff and the 1st defendant and the advocate for the plaintiff herein, and the said advocates and the parties hereto praying this court to pass a decree in terms of partition deed morefully setout in the schedule hereunder, **it is ordered and decreed as follows:-**

That Sri S Rampprasadh PARTY OF THE FIRST PART/ 1ST PLAINTIFF herein shall henceforth be separate and exclusive owner of the property morefully setout in the Schedule “C” (forming part of the Schedule “A” and “B” property) hereunder as per the Plan Attached hereto.

2.That Sri S Shivpprasadh PARTY OF THE SECOND PART/1ST DEFENDANT herein shall hence fourth be separate and exclusive owner of the property morefully setout in the Schedule “D” (forming part of the Schedule “A” and “B” property) hereunder as per the Plan Attached hereto.

3.That each of the PARTIES OF THE FIRST AND SECOND PARTS herein shall hereafter hold and enjoy the properties so allotted

severally as detailed above which is morefully and particularly described in the respective Schedules "C" and "D" hereunder and the said properties were discharged from all claims and demands of the other thereto and declare each other that the said properties are free from all encumbrances whatsoever.

4. That each of the PARTIES OF THE FIRST AND SECOND PARTS herein release, relinquish and renounce their rights, title and interest in the property allotted by this PARTITION DEED to others so much so that each of the parties hereto is their sole and absolute owner of their respective properties allotted to them in the relevant Schedule "C" and "D" hereunder and shall there by enjoy the same absolutely without any let or hindrance from each other parties to this PARTITION DEED by occupying and utilizing the same for personal, business and for other purposes etc.

5. That it is also agreed that the allotment made under this PARTITION DEED in respect of the item of the property which is more fully and particularly described in the respective Schedules "C" and "D: hereunder for each part has been duly valued in equal proportions and each of the parties have satisfied with the aforesaid allotment and further declare that they shall have no objections or claims whatsoever against each other in this allotment of partitioned properties under this

PARTITION DEED.

6. That the PARTIES OF THE FIRST and SECOND PARTS, hereby allotted under this PARTITION DEED the Schedules "C" and "D" hereunder hereafter shall be entered into upon this day and henceforth be held in severally by taking absolute possession of the said respective properties without any interruption of disturbance by the other or any one claiming through or under them.

7. That all the taxes viz. Corporation of Chennai/Property Tax, Water and Sewerage (CMWSS Board) Tax and charges, Electricity Charges and Deposits if any, public charges, kist, quit rent and other land revenues, taxes, amenities and levies payable to the Government, Municipality or other Local Authority etc., in respect of the properties that is more fully and particularly described in the Schedules "C" and "D" (forming part of the Schedule "A" and "B" property) hereunder have been paid by the PARTIES herein up to date and in case of any dues claimed by the statutory authorities etc., if there is any amount due found at a later date the same dues shall be borne by the respective owners of their respective Schedule "C" and "D" properties of the PARTIES OF THE FIRST and SECOND PARTS herein.

8. That the PARTIES OF THE FIRST AND SECOND PARTS herein shall meet all the liabilities in respect of the public charges, taxes,

including urban land tax and other taxes attributable to the ownership of the respective property allotted under this PARTITION DEED to each of them herein from this day onwards.

9. That each of the PARTIES OF THE FIRST and SECOND PARTS herein shall at the cost of the other so requiring the same do every such act or thing as may reasonably be required for further and more perfectly assuring the property hereby allotted under this PARTITION DEED to such party.

10. That IT IS FURTHER AGREED by reason of this PARTITION DEED so effected each party shall be entitled to have mutations effected in the revenue records of the Taluk office and the transfer of ownership for taxation purposes in the Corporation of Chennai, CMWSS Board and also effect other name transfers in the Electricity Board etc.

11. That it is hereby mutually agreed by the parties that the said PARTITION DEED is entered into at present for the sake of identifying their share of properties by metes and bounds as per the plan attached hereto during the lifetime of the parties herein and further to avoid any differences among the legal heirs of the parties enjoying in future peacefully.

12. That all the PARTIES OF THE FIRST and SECOND PARTS

herein declare that they are of sound mind and memory at the time of executing this PARTITION DEED and have acted out of their own free will, volition and without duress or undue influence of anybody.

13. That no payment or consideration has been passed amongst the PARTIES OF THE FIRST and SECOND PARTS herein for executing this PARTITION DEED.

14. That there shall be no costs of this suit.

SCHEDULE PROPERTY

All that piece and parcel of land together with the Bungalow and Ground thereon then Municipal No.26A, (as per municipal records 22) Old Door No.21, New Door No.44, in Bagirathi Ammal Street, T.Nagar, Madras bounded on the North by New No.42 Bagirathi Ammal Street, East by New No.42, Bagirathi Ammal Street, South by Bagirathi Ammal Street and West by premises bearing New No.46 (Old No.20/1, 20/2 and 20/3, 20/4), Bagirathi Ammal Street, bearing T.S.No.6931 part of Block No.108 B, measuring 2 Grounds and 678 square feet and situated in the Registration district of South Madras and Registration Sub-District of T.Nagar, Madras 600 017.

Schedule

Memo

VSP
15/12/2021

C.S.NO.1047 OF 2008
AND
A.NO.7177 OF 2018

PARTITION FINAL DECREE

DATED : 24.03.2021

THE HON'BLE MS. JUSTICE
P.T.ASHA

FOR APPROVAL:15/12/2021

APPROVED ON: 16/12/2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

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(c) Directing the 1st first defendant to render proper accounts of the rental collections form ground floor portion of the 'A' schedule property and the income from the 'B' schedule businesses;

(d) for permanent injunction restraining the first defendant, his agents, servants and men and everyone claiming under them or acting on his behalf from in any way alienating or encumbering the 'A' schedule mentioned property without giving the plaintiffs their 5/9th share by metes and bounds;

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1st defendant herein appearing in person and upon reading the plaint filed in C.S. No.1047 of 2008 and the order dated 29.10.2020 made in C.S.No.1046 and 1047 of 2008 and A.Nos.7177 & 7178 of 2018 and the preliminary decree dated 02/01/2008 made in C.S.Nos.1046 & 1047 of 2008 and the memo dated 16.03.2021 and the partition deed signed by the 1st plaintiff and the 1st defendant and the advocate for the plaintiff herein, and the said advocates and the parties hereto praying this court to pass a decree in terms of partition deed morefully setout in the schedule hereunder, **the court made the following order:-**

A.Nos. 7177 and 7178 in C.S.Nos. 1046 & 1047 of 2008 respectively are applications filed for passing a final decree in terms of the preliminary decree.

2. C.S.No. 1046 of 2008 is filed by one S. Rampprasadh, for a partition and separate possession of his half share in the suit schedule property and for an injunction restraining the defendant from alienating the property.

3. C.S.No.1047 of 2008 is filed by one S. Rampprasadh and his mother Jailakshmi Srinivasan, against S. Shivpprasadh and three others for a partition and separate possession of their 5/9th share in the suit 'A' Schedule property (4/9th share to S. Rampprasadh and 1/9th share to Jailakshmi) and for a 2/3rd share in the 'B' Schedule business besides

praying for other reliefs. The second defendant was a tenant and the third defendant is the sister of the first plaintiff and the first defendant and daughter of the second plaintiff. The fourth defendant is the wife of the first plaintiff. By Judgment and decree dated 02.01.2018, a preliminary decree for partition was passed in both the suits in favour of the first plaintiff. In C.S.No. 1046 of 2008, the plaintiff's right to a half share was declared and in C.S.No.1047 of 2008, a preliminary decree for partition and separate possession of 5/9th share in the 'A' Schedule property alone was decreed in favour of the first and second plaintiffs. With reference to 'B' Schedule properties, the suit stood dismissed and the counter claim filed by the first defendant was also dismissed. Thereafter, the plaintiff S. Rampprasadh has taken out these two applications, namely; A.No. 7178 of 2018 in C.S.No.1046 of 2008 for passing a final decree allotting his half share as per the preliminary decree and A.No.7177 of 2018 in C.S.No.1047 of 2008 for passing a final decree by allotting the 5/9th share of the plaintiffs.

4. This court had appointed an Advocate Commissioner to conduct an enquiry, inspect the schedule mentioned property, note down its physical features and measure the same and allot the share to the parties. The Advocate Commissioner was directed to conduct mesne profit enquiry. The Advocate Commissioner had submitted the interim report

and thereafter filed his final report on 08.12.2020. Objection has also been filed to the said report.

5. Pending these applications, the first plaintiff in C.S.No.1047 of 2008, had filed a memo stating that he had no claim against defendants 2 to 4 and had therefore given them up. The said memo is taken on file and it is recorded that the first plaintiff does not have any claim against the defendants 2 to 4, likewise the second plaintiff in the suit C.S.No.1047 of 2008 had passed away on 02.04.2020. Prior to her demise, the second plaintiff Jailakshmi Srinivasan, had executed a registered Settlement Deed dated 19.11.2020 registered as Document No.2463 of 2010 on the file of the SRO, T.Nagar bequeathing her 1/9th share in the 'A' suit schedule property in favour of the first plaintiff. This memo was also taken on file and the legal representatives of the second plaintiff was also brought on record. Pending these proceedings, fortunately, the siblings decided to work out a settlement amongst themselves and their effort has borne fruit.

6. The first plaintiff Rampprasadh and the first defendant Shivpprasadh have entered into a registered partition deed dated 02.03.2021 registered as Document No. 555 of 2021 on the file of the SRO, T.Nagar. Under the Partnership Deed, C and D Schedule properties have been carved out from the schedule A and B Schedule properties.

The 'C' Schedule property is allotted to the plaintiff S. Rampprasadh and the 'D' Schedule property is allotted to the defendant S. Shivpprasadh. A memo dated 16.03.2021 has been filed in both the applications enclosing therewith this Partition Deed. Therefore, a final decree is passed in terms of the Partition Deed dated 02.03.2021 executed between the plaintiff S. Rampprasadh and the first defendant S. Shivpprasadh, registered as Document No.555 of 2021 on the file of the SRO. T. Nagar. The Partition Deed would form part of the final Decree in A.Nos.7177 and 7178 of 2018 in C.S.No.1047 and 1046 of 2008 respectively. No costs.

Sd./-P.T.A.J
24.03.2021

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.