

IN THE HIGH COURT OF JUDICATURE AT MADRAS**RESERVED ON : 15.03.2017****PRONOUNCED ON : 20.03.2017****CORAM****THE HONOURABLE MR.JUSTICE T.RAVINDRAN****C.S.No.563 of 2013**

R.Koperundevi	..	Plaintiff
	V.	
P.Loganathan	..	Defendant

For Plaintiff	: Mr.R.Karthikeyan
For Defendant	: Mr.A.K.Venkatesan

JUDGMENT

The suit has been laid by the plaintiff for partition.

2. The averments contained in the plaint are briefly stated as follows:

The plaintiff and the defendant are the legal heirs of the deceased S.Purushothaman. The suit property was owned by S.Purushothaman and the same was allotted to him on 23.06.1979 under a lease cum sale agreement by the Tamil Nadu Housing Board and in the year 1992, the Tamil Nadu Housing Board, represented by its Executive Engineer, had executed and registered a sale deed dated 27.11.1992 conveying the suit property in favour of S.Purushothaman

and thus, the entire suit property was absolutely owned and possessed by the father of the plaintiff and the defendant and during the life time of the plaintiff's father, the defendant was permitted to occupy the portion of the suit property and the remaining portion was under the occupation of the plaintiff and her father. The husband of the plaintiff and her son were residing at Maduravoyal and the plaintiff was also actually residing in the suit schedule property along with her father to look after him and thus, the plaintiff is also in joint possession of the suit property along with the defendant. The mother of the parties, viz., Krishnaveni, had predeceased her husband on 02.04.1991. The plaintiff requested to allot her due share in the suit property but the defendant did not allot her share and hence, the plaintiff has been necessitated to lay the suit for partition.

3. The averments contained in the written statement filed by the defendant are briefly stated as follows:

The suit is not maintainable either in law or on facts. The relationship between the parties is admitted. No doubt, the plot was allotted in the name of S.Purushothaman, the father of the parties, but, he was only a name lender and the entire payment to the Tamil Nadu Housing Board has been made only by the defendant out of his income and the allegation that S.Purushothaman had owned and possessed the suit property is incorrect. The entire amount for the purchase of the suit property has been borne by the defendant alone.

The father of the parties sold an ancestral property at Thirumeni Village standing in the name of Sellaperumal for a sum of Rs.3,000/- and with the said income one room was constructed in the suit property and the defendant and his family members started living there. The plaintiff was given in marriage by spending enormous money and thereafter, she has been living at Maduravoyal. The defendant spent his own money in constructing the first floor AC sheet roofing construction and the defendant's father was living there till his life time and thereafter, after the demise of the father, the plaintiff and her husband high handedly locked up half portion in the ground floor and kept the same under lock and key. The police complaint had been preferred by the defendant and the enquiry is pending. It is false to state that the plaintiff made a request to divide the suit property into two equal shares. The plaintiff has claimed share in the suit property by producing a false Will dated 27.12.1993 and when the same had been resisted by the defendant, she had come forward with the present suit laying false claim. S.Purushothaman did not have adequate income to purchase the suit property and hence, the plaintiff is not entitled to claim any share in the suit property and the suit is liable to be dismissed.

4. On the basis of the above pleadings, the following issues are framed for determination in this civil suit:-

"1. Whether the plaintiff is entitled to partition and separate possession of

1/2 share in the suit property?

2. Whether the suit property is a separate property or ancestral property?

3. To what other reliefs, the parties are entitled to?"

5. In support of the plaintiff's case, PW1 has been examined and Exs.P1 to 4 were marked. On the side of the defendant, DW1 has been examined and no document has been marked.

6. ISSUES NOS.1 & 2

The plaintiff is the sister and the defendant is the brother and both are the children of the deceased S.Purushothaman. Claiming that the suit property is the absolute property of S.Purushothaman, the plaintiff has laid the suit claiming half share in the suit property.

7. The relationship between the parties is not disputed by the defendant. It is also admitted by the defendant that the suit property stands in the name of S.Purushothaman, the father of the parties. However, it is the case of the defendant that S.Purushothaman did not have income to purchase the suit property and it is only the defendant, who had paid the installments to the Tamil Nadu Housing Board for the plot and also acquired the suit property out of his income and thus, it

is the case of the defendant that the suit property is not the property absolutely owned by S.Purushothaman, the father of the parties.

8. It is stated in the written statement that the father of the parties sold the ancestral property and out of the profits thereof put up a room in the suit property. However, with reference to the above defence set out by the defendant, there is no material forthcoming.

9. The case of the defendant that it is he, who had contributed the amount for paying the installments to the Tamil Nadu Housing Board and also for obtaining the sale deed from the Tamil Nadu Housing Board in respect of the suit property in the name of his father is not buttressed by acceptable and reliable material. Therefore, it could be seen that the defendant has, without any basis, laid the above defence to stifle the plaintiff's case one way or the other.

10. Though various defences have been taken by the defendant in the written statement, during the course of his evidence, he has clearly admitted that the Tamil Nadu Housing Board allotted the suit property to his father in the year 1979 and that, his father had paid EMI of Rs.45/- for 20 years and it is correct to state that the sale deed Ex.P1 in respect of the suit property was executed in his father's favour in the year 1992 and it is correct to state that his father had paid a total sale consideration of Rs.4,600/- to the Tamil Nadu Housing

Board and further, he has also admitted that the property tax and the E.B connection stand in the name of his father and it is correct to state that until his life time, he was paying the property tax and E.B charges. Therefore, it could be seen that the defendant has, without any doubt, admitted the title of his father S.Purushothaman in respect of the suit property under Ex.A1. As adverted to earlier, no material, whatsoever, has been placed by the defendant to hold that he had contributed his income for the acquisition of the suit property in the name of his father. Further, as seen above, the claim of the utility of any ancestral income for the acquisition of the suit property or for making any improvement in the suit property is also not established by the defendant by adducing acceptable and reliable evidence.

11. The defendant has also taken a plea that the plaintiff had earlier projected a Will for claiming her share in the suit property and when the same had been resisted by him, she had come forward with the present suit seeking partition. But, when it is found that the suit property belonged to the father S.Purushothaman, it could be seen that the plaintiff, as one of his legal heirs, is entitled to her due share in the suit property. The projection of the the Will earlier by the plaintiff for claiming share in the suit property would not disentitle the plaintiff to claim share in the suit property as the legal heir of her father under Section 8 of the Hindu Succession Act, 1956.

12. The defendant has also, by way of his admission, admitted that the plaintiff is entitled to half share in the suit property. In this connection, the defendant has clearly stated during the course of his cross examination that his father had only two children, himself and his sister, the plaintiff and it is correct to state that the plaintiff is entitled to half share in the suit property and it is correct to state that the plaintiff is entitled to equal share in the suit property. In the light of the above admission and also, when it is found that the suit property is the absolute property of S.Purushothaman, the father of the parties and when it is found that both the plaintiff and the defendant are the legal representatives of the deceased S.Purushothaman, it could be seen that as claimed by the plaintiff, she is entitled to 1/2 share in the suit property.

13. In support of his contention, the plaintiff's counsel, relied upon the decisions of: (i) ***the Delhi High Court dated 31.01.1972 reported in the Indian Kanoon in the case of Parma Nand Ahuja Vs. Satya Deo Ahuja and Ors.,*** (ii) ***the Delhi High Court dated 01.12.2016 reported in the Indian Kanoon in the case of Uma Ghate Vs.Umesh Phalpher,*** (iii) ***the Delhi High Court dated 24.02.2014 reported in the Indian Kanoon in the case of Vikram Singh & Anr Vs. Ajit Inder Singh,*** (iv) ***the Madras High Court judgment dated 09.10.2012 in A.S.No.836 of 2009 (Paneerselvam and 5 others Vs. Mohana and another),*** (v)

(1999) 2 MLJ 195 (Sayammal and Ors. V. Rajammal And Ors) and the Karnataka High Court judgment dated 17.08.2012 in Regular Second Appeal No.489 of 2001 (Sayavva Vs.Mallikarjun Channabasappa). The Principles of Law enunciated in the above said decisions are taken into consideration and followed as applicable to the facts and circumstances of the present case.

14. In the light of the above discussions, I hold that the suit property is the separate and absolute property of the deceased S.Purushothaman. I further hold that the plaintiff is entitled to 1/2 share in the suit property and entitled to obtain partition and separate possession of her share in the suit property. Accordingly, issues 1 & 2 are answered.

15. ISSUE NO.3

The plaintiff is entitled to obtain partition and separate possession of 1/2 share in the suit property and accordingly, preliminary decree is granted in favour of the plaintiff. Considering the relationship between the parties, there is no order as to costs.

20.03.2017

Index : Yes/No
Internet: Yes/No
sms/SLI

T.RAVINDRAN,J.

sms

Pre-delivery Judgment in
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