



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2022

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.No. 71 of 2021

Mr. S.Raghuraman

... Plaintiff

Vs.

1. Mrs. Deviga Somassoundirame
 2. Mr.Robert Arjun Sandanakichenin
 3. Mr.Enzo Aditya Sandanakichenin
- Minor rep., by Natural Guardian mother
Mrs. Deviga Somassoundirame

...Defendants

Prayer : Petition filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree by

a) directing the plaintiffs $\frac{1}{2}$ share in the schedule mentioned properties, more fully described in the schedule as item No.1 and 2 hereunder, and pass a preliminary decree to such effect; and

b) directing the defendants to pay the costs of the suit.

For plaintiff : Ms. R.V.Gayatri

**ORDER**

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The suit had been filed seeking partition and separate possession by dividing the two items of property given in the schedule to the plaint into two equal shares and to allot one half to the plaintiff and by natural inference, the other half share to the defendants.

2. The plaintiff S.Raghuraman and the late husband of the first defendant and father of the second and third defendants, S.Ganesan were brothers and sons of B.Santhakrishnan. The father B.Santhakrishnan had beniffited in a partition deed dated 25.03.1991 and had been allotted item No.1 property, namely, land and house bearing Door No. 6-A, Pillaiyar Koil Street, 100 feet Jawaharlal Nehru Salai, Vadapalani, Chennai – 600 026 originally measuring 2696 sq.ft., and had also purchased by sale deed dated 30.09.1971 registered as Document No. 4281 of 1971 in the Office of the Sub Registrar Office, Kodambakkam, the second item of the suit schedule namely land and building measuring 1665 sq.ft., at Old Door No. 49, New No. 56, Palayakaran Street, Kodambakkam, Chennai – 600 024. The plaintiff therefore claimed that he is entitled to an undivided $\frac{1}{2}$ share of the two suit



schedule properties. His brother S.Ganesan, had died in Paris France on 09.12.2014 leaving behind him as his legal representatives the first, second and third defendants.

3. It has been stated in the plaint that S.Ganesan had actually appointed the plaintiff as his power of attorney agent by a registered power of attorney deed dated 13.09.2012 registered as Document No. 806 of 2012 in the office of the Sub Registrar Office, Mylapore, to collect the rents for the properties on his behalf. It is stated by the plaintiff that the rents collected had been deposited into the bank account of his brother S.Ganesan. Since the defendants did not respond to the suit summons, they were set ex-parte on 23.09.2022. The summons had been complied by the Assistant Registrar, OS-I on 19.07.2022. They had not entered appearance. They had not filed written statement.

4. The plaintiff S.Raghuraman examined himself as PW-1. The death certificate of his father B.Santhanakrishnan was marked as Ex.P-1 and the legal heirship certificate was marked as Ex.P-2. The sale deed for the purchase of the second item of the suit property was marked as Ex.P-4. The



general power of Attorney which S.Ganesan, the deceased brother of the plaintiff had given was marked as Ex.P-6.

5. It must be mentioned that out of the original area of 2696 sq.ft., of land in item No.1 property, 344 sq.ft., had been acquired by Land Acquisition Proceedings dated 19.10.2012. Therefore, the land available for partition is 2352 sq.ft. The document relating to the said acquisition of land was marked as Ex.P-7. The plaintiff had occasion to issue a legal notice and a copy of that was marked as Ex.P-9. It had been returned unserved and that cover had been marked as Ex.P-10.

6. The plaintiff had also filed along with the suit the death certificate of his brother S.Ganesan. It is a notarised copy. The learned Master during the course of evidence had apparently refused to mark the same but I would take the same on record and is mark it as Ex.P-11.

7. It must be mentioned that notaires are appointed to attest declarations particularly with respect to birth, marriage and death of French Citizens and therefore, the said document, can be taken on record and is accordingly taken on record.



8. In view of the evidence presented, a preliminary decree is granted to the extent of undivided one half share to the plaintiff and the other half share to the defendants with respect to both item Nos.1 and 2 of the schedule properties.

9. Ms.R.Gandhimadhi, Advocate [Mobile No. 9952081601], Enroll. No. 1197/1994, Madras High Court, Advocate Association, High Court Building, High Court, Chennai – 104, is appointed as Advocate Commissioner. The Advocate Commissioner should give notice to both the plaintiff and the defendants and thereafter, file a report with respect to the division or otherwise of the two schedule properties.

10. The initial remuneration to the Advocate Commissioner is determined at Rs.50,000/- (Rupees fifty Thousand only). In the first instance, the plaintiff may bear the same and later during the final decree proceedings, seek to adjust the payment made with the defendants.



11. A Preliminary Decree is granted as prayed for, however in view of the relationship among the parties without costs.

12. The Advocate Commissioner to discharge the warrant on or before 31.03.2023.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking Order

1. List of Witnesses Examined on the side of the Plaintiff:-

1. P.W.1 – Mr. S.Raghuraman

2. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the downloaded copy of the death certificate of B.Shanthanakrishnan dated 16.10.2022;

2. Ex.P2 is the original legal heirship certificate dated 06.11.1992;

3. Ex.P3 is the certified copy of the sale deed dated 30.09.1971;

4. Ex.P4 is the certified copy of the deed of partition dated 25.03.1991;



5. Ex.P5 is the photocopy of the name change – Tamil Nadu Government Gazette dated 18.02.1999 (Original seen and returned);;
6. Ex.P6 is the original general power of attorney dated 13.09.2012;
7. Ex.P7 is the original order passed by Special Deputy Collector – Land Acquisition proceedings dated 19.10.2012;
8. Ex.P8 is the copy of the letter dated 05.10.2020 along with postal receipt;
9. Ex.P9 is the office copy of the legal notice dated 09.12.2020; and
10. Ex.P10 is the return cover.

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C.V.KARTHIKEYAN, J.
Vsg

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