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C.S.No.177 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2022

CORAM : JUSTICE N.SESHASAYEE

C.S.No.177 of 2013

1.Vittobai
2.Kasthuri (Deceased)
3.Baby (transposed)
3.K.Damodaran
4.D.Vasudevan Plaintiffs

[Plaintiffs 3 & 4 are brought on record as LR's of
the deceased 2nd plaintiff as per order dated 01.02.2017
in A.Nos.530 to 532 of 2017]

Vs

1.E.Jaganathan
2.J.Srinivasan
3.B.Nirmala
4.Baby Defendants

[Ms.Baby, originally was third plaintiff and now transposed
as 4th defendant and 2nd defendant was appointed as next
friend and guardian, by an order of Court dated 21.12.2022
in A.No.4344 of 2022)

Prayer : Civil Suit filed under Order IV Rule 1 r/w. Order XXIV of the Original
Side Rules and Order VII, Rule 1 of CPC., praying to pass a decree and
judgment against the defendants :

(a) to pass a preliminary decree allotting 1/4th share to each plaintiff all



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together allotting 3/4th share in the suit properties;

(b) to appoint an Advocate Commissioner to divide the suit properties into four equal shares and to allot 3 such shares to the plaintiffs by way of final decree and order delivery of possession of the same to the plaintiffs;

(c) to award costs and

(d) to grant such other relief or reliefs

For Plaintiffs : Mr.P.Seshubalan Raja

For Defendants : Mr.G.RM.Palaniappan

JUDGMENT

The suit is laid for partition of three items of schedule mentioned properties belonging to a certain K.Ellaiya Naidu. The case of the plaintiffs is:

- The suit properties are ancestral properties of Ellaiya Naidu. He died intestate on 25.12.1981 leaving behind his wife, Padmavathy and four daughters. Padmavathi had died On 16.08.2003.
- Of the four daughters of Elliaya Naidu, three are the plaintiffs herein. His eldest daughter was Vatsala. She was married to the first defendant. Defendants 2 and 3 are the children of Vatsala and the first defendant.



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- Besides the schedule mentioned properties, the deceased Ellaiya Naidu had certain bank deposits in TNSC Bank, Adayar and Mylapore branches and in State Bank of India, Kottur, Chennai.
- After the demise of Padmavathy, all the title documents of the properties and bank passbooks had come into the hands of Vatsala. And, after Vatsala's demise, they have now come into the hands of the first defendant.
- Both Vatsala and the first defendant had swindled the amounts lying in the bank accounts and utilised it for construction of an apartment in Adayar.
- Ellaiya Naidu had self-acquired properties in and around Chennai, and that one such property in Tharamani. It was acquired by the Government, for which he had received compensation.
- Be that as it may, on 27.08.1981, Ellaiya Naidu had wrote a letter to the first plaintiff's husband requiring him to visit him on 30.08.1981 for discussing about partitioning of his properties. This was also communicated by him to his other daughters as well. All his invitees came forward to settle the issue on 30.08.1981, except the first defendant and his wife, owing to which, the meeting got postponed to sometime in



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December 1981. In the meantime, Ellaiya Naidu died on 25.12.1981, following which, the suit properties devolved on all his four daughters equally.

- On 15.07.2005, the plaintiffs caused issuance of a legal notice to Vatsala, claiming a combined $\frac{3}{4}$ share in the suit properties. Vatsala replied it vide her reply notice dated 27.07.2005, wherein she had admitted that the amount lying in TNSC Bank, Adyar Branch was utilised for maintaining her parents and for payment of taxes, but denied the bank deposits available in State Bank of India, Kottur Branch. So far as the claim for partition is concerned Vatsala expressed no objection to the same but insisted that she be compensated for maintaining the parents and also the properties. She however, provided no details of the expenditure she had incurred. While so, Vatsala died. Thereafter, the plaintiffs caused a legal notice dated 27.01.2012 to the defendants 1 to 3, There was no reply. Hence, the suit was laid for partition.

2. The defendants had filed their written statement denying the contentions in the plaint. Their contentions are :

- The plaintiffs are never in possession of any of the suit properties and



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that no care was taken by them to maintain the property vis-a-vis paying property tax and electricity charges.

- The first defendant and his wife late Vatsala had not swindled the amounts lying in the bank account of Ellaiya Naidu and that they have constructed an apartment out of the same.
- The plaintiffs are not sure about the nature of the properties of Ellaiya Naidu, and that the compensation towards acquisition was received only by Padmavathy, the mother of the plaintiffs and they have not dealt with it.
- These defendants do not have any knowledge about the letter dated 27.08.1981 written by Ellaiya Naidu to the first plaintiff's husband, as they never received any communication about it.
- This apart, the third plaintiff named Baby, was mentally unsound and she was maintained only by the second defendant for the past 15 years, and in the said circumstances, she cannot be arrayed as a party independently.
- Since the plaintiffs have not spent any amount either for maintaining their parents or in maintaining the suit property and other alleged self-acquired properties of Ellaiya Naidu, they cannot claim equal share in the suit



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properties.

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3. On the above pleadings, following issues were framed :

- (1) Whether the plaintiffs are entitled to 1/4th share each in the suit schedule property?*
- (2) Whether the plaintiffs are in possession of the suit schedule property?*
- (3) Whether the third plaintiff is capable of filing the suit against the defendants due to her mental derangement?*
- (4) Whether the reply notice dated 27.07.2005 issued by Vatsala (elder daughter of late K.Ellaiya Naidu and wife of the first defendant) can be termed as a consent for partitioning the suit properties?*
- (5) To what other reliefs the plaintiffs are entitled to?*

4. The dispute went to trial and during trial, for the plaintiff, the first plaintiff was examined as P.W.1 and the fourth plaintiff as P.W.2, and through them Ext.P1 to Ext.P16 came to be marked. For the defendants, the second defendant examined himself as D.W.1, and no documents were marked on the side of the defendants.



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5. Pending suit, vide order dated 22.12.2022, this Court has transposed the third plaintiff as fourth defendant and that the second defendant was appointed as the next friend and guardian of the fourth defendant.

6. Heard both sides. Admittedly the suit properties belongs to Ellaiya Naidu and he died intestate. Necessarily the plaintiffs 1 and 2 would be entitled to 1/4 share each of the suit properties. Accordingly, this Court declares that the plaintiffs 1 and 2 would be entitled to 1/4 share in the suit properties. Since the second plaintiff has passed away, her share would devolve on her legal heirs namely the plaintiffs 3 and 4 herein. The fourth defendant (formerly third plaintiff) is also entitled to a similar 1/4 share in the suit properties.

7. The suit is decreed accordingly. No costs.

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Index : Yes / No

Speaking order / Non-speaking order
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APPENDIX

I. Witnesses :

<i>Plaintiffs :</i>	
PW1	M.Vittobai (1st Plaintiff)
PW2	D.Vasudevan (4th Plaintiff)
<i>Defendants :</i>	
DW1	J.Srinivasan (2nd Defendant)

II. Exhibits :

Ext.P1	18.02.1982	Photocopy of the legal heir certificate issued for the purpose of transferring the pension received by Ellaiya Naidu in favour of his wife Tmt.Padmavathi Ammal.
Ext.P2	10.01.1963	Certified copy of sale deed executed in favour of K.Ellaiya Naidu
Ext.P3	22.01.1942	Certified copy of sale deed executed in favour of K.Ellaiya Naidu
Ext.P4	19.08.1964	Certified copy of sale deed executed in favour of K.Ellaiya Naidu
Ext.P5	27.05.1981	Letter addressed to the first plaintiff's husband by Ellaiya Naidu
Ext.P6	15.07.2005	Advocate Notice sent to Mrs.Vatsala, daughter of Ellaiya Naidu
Ext.P7	27.07.2005	Reply Notice sent by the Advocate of Mrs.Vatsala
Ext.P8 (Series - 6 in nos.)	03.12.2008, 01.12.2008 & 04.12.2008	Original Encumbrance Certificates
Ext.P9		Certified copy of the application for Encumbrance Certificate
Ext.P10	27.01.2012	Advocate notice issued by the first plaintiff to plaintiffs 2, 3 and defendants 1 to 3
Ext.P11	28.01.2012	Original Acknowledgement Card received by the 1st defendant
Ext.P12	28.01.2012	Original Acknowledgement Card received by 3rd plaintiff
Ext.P13	28.01.2012	Registered Article Tracking Report showing delivery of advocate notice to the defendants
Ext.P14	28.12.1981	Deaty Certificate of Ellaiya Naidu (died on 25.12.1981)
Ext.P15	03.03.2014	Death Certificate Kasthuri, second plaintiff (died on 23.01.2014)
Ext.P16	19.08.2014	Legal Heirship Certificate issued to the plaintiffs 3 & 4 now, the LRs of deceased second plaintiff

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