

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 12.01.2018

PRONOUNCED ON: 22.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.353 of 2017

Nirmala Nagarajan

Plaintiff

Vs

V.Ramesh

Defendant

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order XXIV Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiff : M/s.DMH Partners

For Defendant : Set Exparte

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendant:-

- (a) for partition and separate possession of the Plaintiff's half share (1/2<sup>nd</sup> share) in the suit property in favour of the Plaintiff.
- (b) for appointment of an Advocate Commissioner to divide the suit property by metes and bounds into two half share (1/2<sup>nd</sup> share) and allot one half share to the Plaintiff.
- (c) for direction to the Defendant to pay the mesne profit derived from her half share in the suit property as rent, which the Defendant received from the tenant in the ground floor portion of the suit property till date and the Plaintiff may be entitled to receive subsequent rent from the tenant.
- (d) for direction to the Defendant to pay Rs.10,305/- to the

Plaintiff, being fifty per cent of the arrears of house tax paid by the Plaintiff.

(e) directing the Defendants to pay costs of the suit

2. It had been stated in the plaint that the Plaintiff and the Defendant are the daughter and son of late T.N.Vasudeva Rao. The Plaintiff is the elder sister of the Defendant. The Plaintiff got married to one T.S.Nagarajan in June 1992 and has been living with her husband at Kollidam and the Defendant has been living in the suit property. It has been further stated that the father of the Plaintiff and the Defendant had purchased the item (1) of the suit property by virtue of the sale deed dated 29.4.1978 registered as Document No.1054 of 1978 in the Office of the Sub Registrar, Saidapet and constructed ground floor and first floor in the same and he died intestate on 12.03.1991, leaving behind his wife, Padma Vasudevan, the Plaintiff and the Defendant, as is only legal heirs to succeed to the estate

3. It has been further stated that the mother of the Plaintiff also died intestate on 10.02.2009, leaving behind the Plaintiff and the Defendant as the only two legal heirs to succeed to the estate. There were several movable assets as set out in the item (2) of plaint Schedule left by the father and the mother. There were fixed deposits, aggregating Rs.20,00,000/- which were encashed by the Defendant and the movable assets have been retained by the Defendant. The Defendant has been receiving the rent from the rented ground floor portion of the suit property. The Plaintiff had demanded her share in the suit properties in 2014, for which, the Defendant denied. Hence, the relationship between them became strained. In August 2014, the Plaintiff had proposed

for construction of apartment by tying up with a builder and the said proposal was not all acceptable to the Plaintiff. It has been further stated that the Plaintiff had paid the property tax arrears to the tune of Rs.20,610/- for the period from 1998-1999 to 2015/2016 and therefore, the Plaintiff is also entitled to 50% of the said amount.

4. It has been further stated that the Plaintiff had issued a legal notice dated 21.3.2016, calling upon the Defendant, which was returned 'unclaimed'. It has been further stated that as a legal heir, the Plaintiff is entitled to one half share both in the movables and immovable property, which are set out in the Schedule. It is under these circumstances that this civil suit has been filed for partition and separate possession as stated above.

5. Though the Defendant was served on 24.05.2017, no written statement had been filed by the Defendant within time and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendant was set exparte and Exparte Evidence was ordered to be recorded by the order of this court dated 03.11.2017. The Plaintiff had filed her proof affidavit for her chief examination and receipt of ten documents as documentary evidence to prove the suit claim. In the Exparte Evidence, the Plaintiff had examined himself as PW.1 and marked Exs.P1 to P10 as documentary evidence in order to prove the suit claim.

6. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P10 adduced by PW.1, this Court is of the view that the plaintiff has proved the suit claim and consequently, the suit is decreed, as prayed for, with costs

and the Plaintiff is entitled to one half share in the suit property, as prayed for and accordingly, a preliminary decree for partition in favour of the Plaintiff is granted. Without awaiting for an application for passing of a final decree, for the purpose of inspecting the suit property and to give a proposal for allotment of one half share in the suit property to the Plaintiff, by demarcating the suit property, Mr.G.Obalapathi, Advocate, E.No.MS.2932 of 2013, Cell No.9566029106/9677096750, is hereby appointed as the Advocate Commissioner and his initial remuneration is fixed at Rs.25,000/- (Rupees Twenty Five Thousand Only).

22.01.2018

Index:Yes/No  
Web:Yes/No  
Srcm



# WEB COPY

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

1. P.W.1 - Nirmala Nagarajan

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

1. Ex.P1 is the certified copy of the sale deed dated 29.4.1978 registered as Document No.1054 of 1978 at SRO, Saidapet.
2. Ex.P2 is the copy of the death certificate of T.N.Vasudeva Rao.
3. Ex.P3 is the copy of the legal heirship certificate of T.N.Vasudeva Rao.
4. Ex.P4 is the copy of the death certificate of Padma Vasudevan.
5. Ex.P5 is the copy of the legal heirship certificate of Padma Vasudevan.
6. Ex.P6 is the computer generated copy of the Corporation of Chennai property tax receipt.
7. Ex.P7 is the property tax assessment name change notice issued by the Chennai Corporation.
8. Ex.P8 is the encumbrance certificate.
9. Ex.P9 is the copy of the legal notice dated 21.3.2016 sent by the Plaintiff to the Defendant.
- 10.Ex.P10 is the returned cover containing the notice with postal endorsement as "unclaimed."

3. List of Witnesses Examined on the side of the defendant:-

Nil

4. List of Exhibits Marked on the side of the defendant:-

Nil

22.01.2018

Srcm

C.V.KARTHIKEYAN, J.

Srcm



Pre-Delivery Judgement in  
CS.No.353 of 2017

WEB COPY

22.01.2018