

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.07.2017

Pronounced on : 06 .07.2017

Coram

The Hon'ble Mr.Justice C.V.KARTHIKEYAN

C.S.No.714 of 2011

G.Usha Rao

...Plaintiff

Vs.

1. Mr.Dharamvir Singh Rawat
2.Mr.Mohan Singh Rawat
3.Mrs.S.Saraswathy
4.Mr.Palanichandran
5.Mr.S.S.Sekar
6.Mr.Kanagaraj

...Defendants

Prayer :

This suit is filed Under Order VII Rule 1 of C.P.C and Order IV Rule 1 of Original Side Rules to pass a Judgment and Decree against the Defendants:

a. For a preliminary decree of partition allotting the plaintiff's 1/4th share right and interest in the Suit Property and put the plaintiff in separate possession.

b. To pass a final decree in terms of the preliminary decree by appointing an advocate commissioner and to divide the suit property by metes and bounds and to allot the plaintiff's 1/4th share in the suit property.

c.To direct the First Defendant to pay a sum of Rs.1,37,250/- towards the plaintiff's 1/4th share in the past mesne profits received and enjoyed by the first defendant from the suit property namely rental income and also the plaintiff's 1/4th share from the future rental income from the date of the suit.

d. For a permanent injunction restraining the defendants 1 to 3 their men, agents, representative and legal heirs from in any way/manner disturbing the plaintiff's peaceful running of her Dental clinic in the portion of the Suit property.

e. For a mandatory injunction directing the defendants 4 to 6 to share the rents equally to the plaintiff and the defendants 1 to 3.

f. To pay the costs of the suit.

For Plaintiff : Mr.S.Satish Rajan

For Defendants : No appearance

JUDGMENT

This Suit has been filed, seeking partition and separate possession of 1/4th share in the suit property and also for a direction to the first defendant to pay a sum of Rs.1,37,250 towards past mesne profits, and also for permanent Injunction, restraining the first, second, third defendants from interfering with plaintiff's peaceful running of Dental clinic and for Mandatory Injunction to share the rents equally among the plaintiff and first, second and third defendants and for costs.

2. The plaintiff is the younger sister of the first and second and the third defendants. The first and second defendants are her brothers, and third defendant is her sister. They are all children of one Hayat Singh Rawat. It has been stated, that the suit property in old door No.74, new door No.57, Bajanai Koil Street, Choolaimedu, Chennai-600 094 in Town Survey No.95, Block No.10, measuring to an extent of one ground and 1771 Sq.ft., of land and building originally belonged to their father Hayat Singh Rawat, who had purchased the same from K.V.Rajan by a sale deed dated 30.03.1979, registered as Document No.1172 of 1979 in the Office of Sub-Registrar, Kodambakkam.

3. It has been stated that the fourth, fifth and sixth defendants are the tenants in the suit property. The father of the plaintiff and the first, second and third defendants died on 05.06.2007 and their mother Gora Devi died on 05.11.2008. Claiming to be a daughter and further claiming that the daughter is entitled to a share in the suit property and a share in the rents from the suit property, this suit has been filed. It has been further stated the plaintiff is running a Dental clinic in a portion of one of the shops in the ground floor to an extent of 150 Sq.ft. The other defendants are also running their respective businesses in the suit property.

4. It had been further stated that the demand of the plaintiff seeking for partition was not heeded by the defendants. The plaintiff had issued a notice

dated 18.02.2011. She also sent another notice on 09.06.2011. Consequently, she has filed the present suit seeking the reliefs stated above.

5. The notices were served on the first, second, fifth and sixth defendants on 09.06.2011 and the notice on the fourth defendant was served on 10.02.2011. The notice on the third defendant was served on 28.12.2011. However, they have not filed their written statements. Consequently, the suit was referred to undefended board and the defendants were set exparte on 21.04.2017 for non filing of the written statement. The plaintiff was directed to give exparte evidence before the Additional Master No.IV.

6. Accordingly the plaintiff adduced evidence on 08.06.2017. She filed a proof affidavit and she had stated in the proof affidavit that she is entitled to undivided 1/4th share in the suit property and that she is also entitled to the relief of Permanent Injunction, separate possession and that she is also entitled to past and future mesne profits along with the defendants.

7. Among the documents filed by the plaintiff, which were marked as Ex.P.1 to P.13, Ex.P.1 is the sale dated for purchase of the property by the father of the plaintiff. Ex.P.2 is the death certificate of her father, Ex.P.13 is the legal heirship certificate, Ex.P.4 is the death certificate of her mother, Ex.P.5 is the copy of the notice dated 18.02.2011 and Ex.P.9 is the copy of notice dated 09.06.2011, Ex.P.6, P.7, P.10, P.11 and P.12 are

acknowledgements for service of the above notices. Ex.P.8 is the Encumbrance Certificate. Ex.P.13 is the Rough Sketch.

8. On a careful consideration of the the oral and documentary evidence, it is clear that the plaintiff, first, second and third defendants are brothers and sisters. They are the daughters and sons of Hayat Singh Rawat and Gora Devi, who died intestate. To evidence such facts Ex.P.2, P.3, Ex.P.4 are marked. Ex.P.2 is the legal heirship certificate of her father. Consequently, I hold that the plaintiff is entitled to 1/4th share in the suit property.

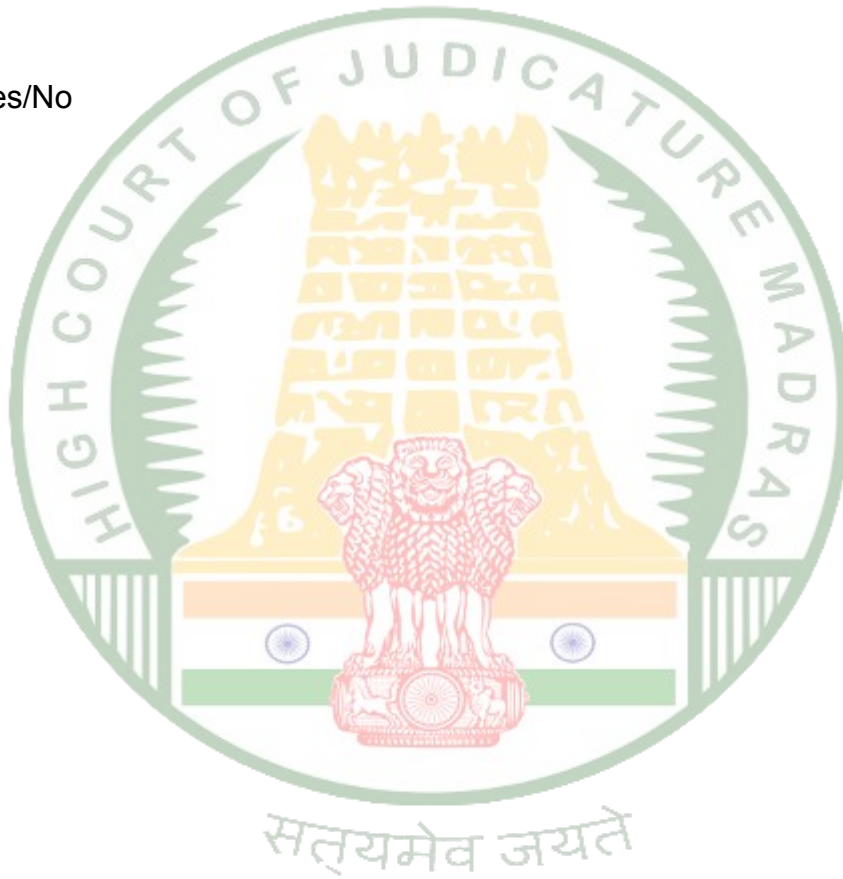
9. Accordingly a preliminary decree for partition is passed. A decree for permanent Injunction is also granted, restraining the defendants from interfering with the peaceful possession of plaintiff's Dental clinic. In so far as the reliefs of past mesne profits and share in the rents are concerned, the plaintiff is entitled to seek appointment of an Advocate Commissioner to inspect the suit property and suggest the method of dividing the same and to allot 1/4th to the plaintiff and to determine the rent paid from the date of the suit by the 4th, 5, 6th defendants, who are tenants and thereafter, the mesne profits can be determined in the final decree proceedings. Considering the relationship among the parties, there will be no order as to costs.

10. Accordingly, preliminary decree is passed in the above terms.

06.07.2017

tkp/vrc

Index : Yes/No



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C.V.KARTHIKEYAN,J.

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**Judgment in
C.S.No.714 of 2011**

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