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C.S.No.211 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11..2022

CORAM

THE HON'BLE MR. JUSTICE C.V.KARTHIKEYAN

Civil Suit No.211 of 2021

Ms.Brenda Philomena Cole

D/o.K.V.Rao

66, Johanson Promenande, Murdoch 6150

Perth, wEstern Australia.

..Plaintiff

. Vs.

Mr.Denzil Godfrey Rao

S/o.K.V.Rao

97, Jackson Avenue, Winthrop 6150

Perth, Western Australia.

... Defendant

Prayer: Civil Suit filed under Order VII Rule 1 of CPC., and Order IV Rule 1 of Original Side Rules, pleased to pass a decree for:

i) partition of the suit schedule mentioned property and separate possession of the plaintiff i.e. 50% share in the suit schedule mentioned property. In the event the suit schedule mentioned property is not viable for partition by metes and bounds, this Hon'ble Court may be pleased to pass a decree for.



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- ii) sale of the suit schedule mentioned property for the maximum price.
- iii) the Plaintiff to be paid half share of such price and other half share to the Defendant, and
- iv) the costs for the suit.

For Plaintiff : M/s.Surana & Surana

For Defendant : Mr.V.B.Sundhareshwarar

JUDGMENT

The cause of action paragraph in the suit is as follows:

“The cause of action for this suit arose at Chennai wherein the suit schedule mentioned property has been purchased by Mr.K.V.Rao. The suit schedule mentioned property is situated within the jurisdiction of this Hon'ble Court. **Subsequently, the Plaintiff is awaiting this Hon'ble Court's direction in O.P.No.923 of 2017 for grant of Letters of Administration to her as the beneficiary under the said Will .”**



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2.It is seen that there is no disclosure of actual cause of action for instituting the suit.

3.Independently, O.P.No.923 of 2017 had been filed for grant of letters of administration as a beneficiary under the Will. It is trite to point out that the Will has to be proved in manner known to law. The Will has to be in conformity with Section 63(c) of the Indian Succession Act, 1925. Thereafter, the procedure under Section 68 of the Indian Evidence Act, 1872 will have to be followed and the attestors will have to be examined. If the attestors are not available then the procedure under Order 16 Rule 10 CPC., will have to be followed and thereafter the procedure of Section 69 of the Indian Evidence Act, will have to be followed. These procedures will have to be undergone before any order in O.P.No.923 of 2017 can be passed.

4.Even the preliminary steps had not been taken.

5.Filing of a simultaneous suit seeking partition in the belief that



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orders will be granted in O.P.No.923 of 2017 is a clear case of taking Court orders for granted. Unless, the Will is proved in the manner known to law, Letters of Administration cannot be granted. Only if Letters of Administration are granted will cause arise to seek partition and separate possession. On the date when the suit was verified on 20.5.2021, there was an illusory cause of action.

6.The Suit stands dismissed.

7.However since the suit is only for partition, the plaintiff can always file a fresh suit but only after orders are obtained in O.P.No.923 of 2017.

8.The Suit is dismissed. No costs. Connected applications are closed.

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Internet: Yes
Index:Yes/No
Speaking Order : Yes/No
KP



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To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.



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C.V.KARTHIKEYAN,J.,

KP

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