



C.S.No.29 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

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A.Ganesan

.. Plaintiff

/versus/

A.Paramasivan

.. Defendant

This Civil Suit is filed under Order IV Rules 1 & 2 of the Madras High Court Original Side Rules read with Order VII Rule 1 of C.P.C., prayed for a judgment and decree against the Defendant:-

i).to a preliminary judgment and decree for partition and separate possession of the suit schedule 'A' property into two equal shares and allocate one share to the plaintiff by metes and bounds;

ii).to appoint an Advocate Commissioner to divide the Suit 'A' schedule property into two equal shares by metes and bounds and allot 1 share to the plaintiff;



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iii).for permanent injunction restraining the defendant his men, agents, servants or anyone authorized by him from interfering with the plaintiff's peaceful possession and enjoyment of the suit 'A' schedule property;

iv).for permanent injunction restraining the defendant his men, agents, servants or anyone authorized by him from interfering with the plaintiff's enjoyment of the amenities of water, electricity, drainage, common areas, staircase, passage and parking in the suit 'A' schedule property.

v).for mandatory injunction directing the defendant to demolish/remove the temporary hardboard partition in the ground floor morefully described in the schedule 'B' hereunder;

vi).for costs of the suit.

For Plaintiff : Mr.C.Jagadish

For Defendant : Ms.Arulmangai



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JUDGMENT

The Suit has been filed by the elder son of Angu Mudaliar against his own brother seeking partition and separate possession of 1/2 share in the suit schedule property, which is situated at Door No.220, Alwarpet Street, (formerly Pillaiyar Koil Street), Teynampet, Chennai - 600 018, admeasuring 2523 sq.ft., together with building in the ground, first and second floor as described in the schedule to the plaint.

2.The plaintiff also complained that the defendant had put up a partition in the ground floor and that had been described as B - schedule, but it formed part of the property. It had been stated that the property had been purchased by the father of the plaintiff and the defendant in the name of Chinnammal who was the first wife by a Sale Deed dated 02.07.1938 registered as Document No.1584 of 1938 in the office of the Sub-Registrar, Mylapore. It is further stated that Angu Mudaliar, the father of the plaintiff and the defendant had three wives. The first wife was Chinnammal and through her, a son, Natarajan and a daughter, Vinayagammal were born. The second wife was Krishnaveni. She died



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without begetting any children. The third wife was Kanthammal and through her, the plaintiff and the defendants were born.

3.It is stated that Vinayagammal, the daughter of Chinnammal had executed a Release Deed in favour of Angu Mudaliar and her brother Natarajan and also in favour of Kanthammal, the mother of the plaintiff and the defendant, and also in favour of the plaintiff and the defendant, releasing her right in the subject property for consideration of Rs.200/- by Release Deed dated 25.07.1960 registered as Document No.1391 of 1960 in the office of the Sub-Registrar, Mylapore.

4.Thereafter, a family partition was effected on 16.09.1970 which was registered as Document No.1683 of 1970 again in the office of the Sub-Registrar, Mylapore, by which Natarajan, son of Chinnammal was allotted 1632 sq.ft on the rear side of the property and was also permitted to use a passage of 5 ½ feet. The plaintiff and the defendant and their mother were allotted 2523 sq.ft on the front side. That 2523 sq.ft., of land and building is the subject matter of the present suit for partition between the plaintiff and the defendant.



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5.It is stated that the mother Kanthammal had died. This has left only the plaintiff and the defendant namely, the two sons of Angu Mudaliar born through his third wife, Kanthammal as the only surviving legal heirs. The plaintiff claimed that he is entitled to undivided 1/2 share and that the defendant was entitled to further 1/2 share. Quite apart from the relief of partition, the plaintiff had also sought permanent injunction restraining the defendant from interfering with peaceful possession of the plaintiff with his portion of the property and from interfering with the plaintiff's enjoyment of amenities of water, electricity, drainage, common areas, stair case, passage and parking and to remove the hardboard partition which was described as schedule B to the plaint. The reliefs of permanent injunction would be only consequential, but the main relief was for partition and separate possession of the 1/2 share in the suit property.

6.With respect to the putting up of the partition there had been complaints given to the various authorities and having failed in those attempts, having no other alternate, the plaintiff had filed the present



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suit. In the plaint, there is also reference of the Release Deed having been executed by the Kanthammal, the mother of the plaintiff and the defendant on 12.05.2016 which document was registered as Doc.No.752 of 2016 in the office of the Sub-Registrar, Chennai Central Joint – I releasing her 1/3rd share to the plaintiff and the defendant. Allegations have also been stated about the digging of a bore well and claiming expenses towards the same.

7.The defendant entered appearance and had filed the written statement, wherein he admitted that the title stood in the joint names of himself and the plaintiff. The property has to be divided into two equal halves. The defendant had raised issues relating to the car park and claimed it had been allotted to him.

8.On the basis of the pleadings, the following issues had been framed for trial:-

*“1.Whether it is true that a oral partition had been arrived
between the parties?*



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2. Whether the entire ground floor was allotted to the defendant herein?

3. Whether the entire first floor was allotted to the plaintiff herein?

4. Whether it is true that the front half of the construction portion of the second floor was allotted to the defendant and rear half of the second floor was allotted to the plaintiff?

5. To what other reliefs the parties are entitled to?"

9. Thereafter, the parties were directed to tender evidence. The plaintiff examined himself as PW-1. During the course of examination, he marked Exs.P1 to P6 which documents related to the earlier Release Deed, the Partition Deed and the Legal Heirship Certificate of their father. By those documents, it was sought to be inferred that the title crystallized in favour of the plaintiff and the defendant.

10. The defendant also grazed the witness box and he filed his proof affidavit. He filed his income tax returns as Ex.D1 and the



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Registration of TIN number with respect to the commercial activity conducted by him as Ex.D2. The bills relating to renovation of portion were marked as Exs.D6 and D9 and the complaint given was marked as Ex.D7. The quotation for the civil work was marked as Ex.D8. The Agreement dated 30.08.2017 between APM Insta Care and Samsung India Electronics Private Limited was marked as Ex.D10. A complaint was also lodged by the defendant for nuisance and a copy of that was marked as Ex.D12. The photographs of the office room of the defendant in the second floor, the parking and common areas were marked as Ex.D13 series.

11.During the course of his examination, the plaintiff had stated that there is a staircase of about 60 feet distance from the road which leads to the back portion of the 1st floor of the house, which was used by the tenant and he also stated that he is using the staircase in the front portion to go to the first floor. It was also stated that the mother had released her entire share in the suit property in favour of the plaintiff and the defendant.



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12. During trial, questions were also asked relating a Will said to have been executed by the father, but that had not been produced. Questions were also asked about the possession of the daughter of the plaintiff of a portion of the property. Specific questions were asked implying that it was only after the arrival of the daughter, that disputes have begun with the defendant.

13. It was also stated that the defendant was in occupation of the first floor till 2013. There were also tenants and it was stated that accounts were maintained in common with respect to the rental income. It is also seen that the wife of the plaintiff is actually the sister of the wife of the defendant.

14. The stand of the defendant as evident from the cross-examination of the plaintiff is that there was an oral partition already effected and the ground floor was allotted to the defendant and the 1st floor was allotted to the plaintiff and the front portion of the second floor was allotted to the defendant and the rear portion of the second floor was



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allotted to the plaintiff. This stand of the defendant was denied by the plaintiff.

15.During his cross-examination, the defendant admitted that he is running his office in the residential house. He specifically stated during cross-examination that he had put up construction in one part and was running his office. He claimed that he had obtained necessary permission for such construction. He admitted that the plaintiff is entitled to 1/2 share in the suit property. He denied suggestions that the bills produced for renovation of the property were not related to the suit property. He also stated that he had given three option to the plaintiff to divide the property and further reiterated that the property should be divided in equal terms.

16.Heard arguments advanced by Mr.C.Jagadish, learned counsel for the plaintiff and Ms.Arulmangai, learned counsel for the defendant.



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Issue No.1:

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17.A perusal of the issues framed reflects that the first issue was whether there was an earlier oral partition, which had been arrived between the parties. The possession of the plaintiff and the defendant with respect to the various portions have been more or less admitted during the course of evidence. The plaintiff and the defendant are either in the ground floor or in the first floor and the front portion of the second floor is used by the defendant and the rear portion is used by the plaintiff.

18.However, the plaintiff has denied that there was an earlier oral partition, but that such occupation of the various floors was only a matter of convenience and not on the basis of any agreement.

19.Having filed the suit for partition and separate possession and the defendant having agreed that the plaintiff is entitled to an undivided 1/2 share, it would only appropriate that the parties move away from the oral partition and permit division of the property into two equal shares.



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20.I would therefore answer the first issue that though the parties are in possession of various portions of the suit property, there is no evidence that it was pursuant to any agreement or oral partition agreed by the two of them. There is no evidence as to the date on which such an agreement was entered into and there is no evidence as to the nature of possession and whether it was in equal terms by both the plaintiff and the defendant. I would answer that particular issue that there is no evidence with respect to oral partition and that the Court will now have to enter into a discussion with respect to the actual discussion of the suit property.

Issue Nos: 2, 3 & 4:

21.The second, third and fourth issues flow from the concept of oral partition. It is stated that the defendant is in possession of the ground floor and the plaintiff is in possession of the first floor and that the defendant is carrying on commercial activity in the front portion of the second floor and the plaintiff is in the rear portion of the second floor. But as stated, such possession is only by convenience and both the



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plaintiff and the defendant have realized that they are both entitled to a share in the property and they have realized that they are both entitled to be in possession of the suit property and have taken possession of the various portions as per their convenience. But this cannot be termed as such possession having been allotted by way of an agreement. It is rather an arrangement by convenience.

22.The second, third and fourth issues are therefore answered that though it is correct that the parties are in possession of various portion as stated in the said said issues, the said possession is only as a matter of convenience and not by way of an agreement.

Issue No.5:

23.With respect to the fifth issue, it naturally follows that the house property will have to be divided into two equal shares and 1/2 share will have to be allotted to the plaintiff and the other 1/2 share will have to be allotted to the defendant. Either the property is divided by metes and bounds or if that is not possible, the existing arrangement of possession can be retained by the parties or if that is not agreeable, then



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the proposals given by the defendant can be examined by the plaintiff and again if that is not agreeable, the only option is to sell the property and divide the sale proceeds between the two of them.

24.If it is a question of selling the suit property, the first offer will be necessarily have to be given to either the plaintiff or the defendant to buy the others share. At any rate, these are issues which can be examined during the course of final decree.

25.A preliminary decree is therefore passed, holding that the plaintiff is entitled to an undivided 1/2 share in the property and that the defendant is also entitled to 1/2 share in the suit property.

26.With respect to the relief of permanent injunction, since the parties are in possession of their respective portions, as on date as of convenience, it is only appropriate that the possession is not disturbed and there is no disturbance with respect to the usage of the amenities which are being enjoyed by the plaintiff and by the defendant. There will also be injunction against the plaintiff that he should also not disturb the



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possession of the defendant. I would therefore with respect to the relief of injunction, injunct both the parties from disturbing the respective possession as on date of the respective parties, which had been stated above namely, ground floor by the defendant, first floor by the plaintiff, the front portion of the second floor by the defendant and the rear portion of the second floor by the plaintiff.

27. With respect to the mandatory injunction relating to the B-schedule property, since it effectively protects possession, I am not inclined to grant any relief. Let that temporary partition remain and in the course of deciding the final decree application and actual division of the property, that issue can also be taken up by both the parties.

28. In view of the fact that it is a litigation between the brothers, I would refrain from awarding costs.

29. In the result, the suit is partly decreed by granting a preliminary decree of 1/2 share to both the plaintiff and the defendant and restraining both the plaintiff and the defendant from interfering with



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each others' possession of the respective portions and dismissing the suit with respect to the relief sought for mandatory injunction. No costs.

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Internet : Yes / No

Index : Yes / No

List of witnesses:

1.A.Ganesan (PW-1)

2.A.Paramasivan (DW-1)

List of exhibits marked on the side of the plaintiff:-

1.Ex.P1 is the certified copy of Release Deed registered as Document No.1391/1960 dated 25.07.1960.

2.Ex.P2 is the certified copy of Partition Deed registered as Document No.1683/1970 dated 16.09.1970.

3.Ex.P3 is the certified copy of sketch annexed Document No.1683/1970 dated 16.09.1970.

4.Ex.P4 is the copy of the Death Certificate of Angu Mudaliar dated



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15.12.1993.

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5.Ex.P5 is the copy of the Legalheir Certificate of G.Angu Mudaliar dated 18.02.1994.

6.Ex.P6 is the certified copy of the Release Deed registered as Document No.752/2016 dated 12.05.2016.

7.Ex.P7 is the original photographs 14 Nos and CD-1 No, pertaining to the suit property.

List of exhibits marked on the side of the defendant:-

1.Ex.D1 is downloaded from website of IT returns filed by M/s.APM Insta Care for 2002-2003 and 2014-2015 to 2020-2021 dated 08.08.2002.

2.Ex.D2 is the original certificate of Registration of TIN Number with Government of Tamil Nadu, Commercial Taxes Department for M/s.APM Insta Care dated 28.01.2009.

3.Ex.D3 is downloaded from website of E-stamp certificate for Agreement between APM Insta Care and Samsung India Electronics Private Limited dated 24.10.2013.

4.Ex.D4 is downloaded from website of E-stamp certificate for



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Authorized Service Centre Agreement between APM Insta Care and Samsung India Electronics Private Limited dated 01.04.2015.

5.Ex.D5 is the original Quotation of Uniques Civil Work for renovation of defendant's ground floor portion dated 09.11.2015.

6.Ex.D6 is the series of original bill relation to renovation of the defendant's portion in the ground floor after oral partition was agreed upon dated 14.11.2015 to 28.01.2016.

7.Ex.D7 is the photocopy of the complaint given by the defendant against the plaintiff regarding tenant who was not vacating the ground floor premises after partition dated 14.04.2016.

8.Ex.D8 is the series of original quotation of Uniques Civil Work for renovation of defendant's second floor portion dated 12.05.2016.

9.Ex.D9 is the series of original bill relating to renovation of the defendant's portion in the second floor after oral partition was agreed upon dated 17.05.2016 to 31.07.2016.

10.Ex.D10 is downloaded from website of E-stamp certificate for spare part agreement between APM Insta Care and Samsung India Electronics Private Limited dated 30.08.2017.

11.Ex.D11 is downloaded from website of GST Registration Certificate



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of M/s.APM Insta Care dated 25.09.2017.

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12.Ex.D12 is photocopy of the complaint filed by the defendant against the plaintiff for nuisance created by him in portico area, and illegally accessing 2nd floor room dated 21.03.2018.

13.Ex.D13 is the original photographs showing the defendant's office rooms in the second floor and parking and common areas and locked office room with receipt and photographs showing the residential portions in both the first floor and ground floor before and after oral partition between the plaintiff and the defendant.

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C.V.KARTHIKEYAN,J.



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