

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 03.03.2022

Coram:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.No.593 of 2018

1.G.Swaminath Rao
2.G.Heera Rao
3.G.Mahadeo Naig

...Plaintiffs

Vs.

G.Gangaprasad Rao

.... Defendant

Civil Suit filed under Order IV Rule 1 of Original Side Rules, read with Order VII Rule 1 of CPC seeking for the following reliefs:

(i). For partition of the suit schedule property into four equal shares and allot 1/4th share to each plaintiff by metes and bounds along with separate possession.

(ii). For cost of the suit.

For plaintiffs : Mr.V.Chandrasekaran

For defendant : Mr.M.K.Viswanath

J U D G E M E N T

This suit has been filed for partition of the suit schedule property into four equal shares and to allot 1/4th share to each of the plaintiffs by metes and bounds along with separate possession.

2. The case of the plaintiffs is that the 1st plaintiff is the son of Late Gnanasagar Rao born through his first wife Mrs.Kamala. The said Kamala died on 31.12.1961 and after her death, Gnanasagar Rao married Mrs. Annaji Shyamala Rao alias Shyamala Gnanasagar Rao as his second wife. The plaintiffs 2 and 3 and the defendant are the sons and daughter of Late Gnanasagar Rao born through his second wife. Both the plaintiffs and the defendant were brought up by Mrs. Annaji Shyamala Rao. The property bearing Plot No.35, 36 and 37, Janakiraman Colony, Arumbakkam, Chennai-600 106, comprised in survey No.233/1, T.S.Nos.21, 22, 23 in Block No.3, Arumbakkam Village, measuring an extent of 7200 sq.ft. was purchased by the Late Gnanasagar Rao in the name of his second wife Mrs. Annaji Shyamala Gnanasagar Rao along with her sister Mrs. Indira alias Indra Bai, the wife of Govinda Rao under a Sale Deed registered as Document

No.3208/1963 from one Mrs.Amaravathy Ammal and others. Thereafter, they sold a portion of the land property measuring to an extent of 3600 Sq.ft. comprised in Plot No.37 and Plot No.36(part) to Mrs.D.Anusuya W/o. D.Gopalakrishnan under a Sale Deed registered as Document No.3868/1973. Subsequently, the said Mrs. Indira alias Indra Bai, discharged her right and title over the remaining land in favour of her sister Mrs. Annaji Shyamala Gnanasagar Rao through a Release Deed registered as Document No.3870/1973 dated 18.10.1973 at SRO, Kodambakkam. From then onwards, the suit schedule property stood in the name of Mrs. Annaji Shyamala Gnanasagar Rao and she is in possession of the same.

3. It is also the case of the plaintiffs that Gnanasagar Rao died intestate on 22.06.1991 leaving behind his second wife, the plaintiffs and the defendant as his legal heirs. Thereafter, Mrs. Annaji Shyamala Gnanasagar Rao executed a Deed of Settlement on 11.09.2006 under Document No.3618/2006 at SRO, Kodambakkam, settling the suit schedule property in favour of plaintiffs and the defendant equally. Thereafter, on 12.12.2016 Mrs. Annaji Shyamala Gnanasagar Rao died and the suit

schedule property became a common property of the plaintiffs and the defendant and they are equally entitled to the suit property i.e. each party is entitled to 1/4th undivided share. The plaintiffs and the defendant are co-owners of the suit schedule property and have been in joint constructive possession and enjoyment of the same. While so, the defendant was approached by the plaintiffs asking for partition of the suit schedule property. But the defendant refused to consider the same. Thereafter, a legal notice dated 29.04.2017 was sent to the defendant seeking partition of the said property for which, the defendant replied on 20.05.2017 in a very frivolous terms ignoring the rightful claim of the plaintiffs on the suit property. Therefore, the present suit has been filed seeking for partition of the suit schedule property into four equal shares and to allot 1/4th share to each of the plaintiffs by metes and bounds along with separate possession.

4. On 02.12.2021, the learned Counsel for the plaintiffs would submit that the plaintiffs are willing to give 1/4th share in the suit schedule property to the defendant for which, the learned Counsel for the defendant would submit that the said offer is under consideration and he would report

before this Court about the acceptability of the said offer on the next hearing. Therefore, the matter was ordered to be listed on 13.12.2021. when the matter was came up for hearing on 13.12.2021, there was no representation for the defendant and no written statement had been filed till that date. Since the suit is for partition and it is of the year 2018 and in order to substantiate the evidence of the plaintiffs, the defendant was set ex-parte by order dated 13.12.2021 and the matter was referred to the Master for recording evidence. Accordingly, the ex-parte evidence was recorded by the Master.

5. The 1st plaintiff examined himself as P.W.1 by filing proof affidavit and he has reiterated the averments made in the plaint and to substantiate his claim, the following documents were marked as Exs.P.1 to P.8.

<i>Exhibits</i>	<i>Nature of the documents</i>
P1	The certified copy of Sale Deed in Doc. No.3868/1973 dated 18.10.1973
P2	The certified copy of Release Deed in Doc.No.3870/1973 dated 18.10.1973
P3	The print out copy of Death Certificate of Gnanasagar Rao dated 27.12.2016. Affidavit filed under Section 65B.

<i>Exhibits</i>	<i>Nature of the documents</i>
P4	The Original Legal Heirship Certificate of Gnanasagar Roa dated 20.04.2017
P5	The certified copy of Settlement Deed in Doc.No.3618 of 2006 dated 11.09.2006
P6	The print out copy of Death Certificate of Annaji Shyamala Rao dated 27.12.2016. Affidavit filed under Section 65B.
P7	The Photocopy of reply notice sent by the defendant dated 20.05.2017
P8	The Photocopy of Legal Notice dated 29.04.2017

6. Heard the submissions of the learned counsel for the plaintiffs and perused the oral and documentary evidence.

7. After giving due consideration to the averments contained in the plaint as well as the Exhibits marked on the side of the plaintiffs, this Court is of the considered view that the plaintiffs have proved their claim. Therefore, the preliminary decree is passed as prayed for.

03.03.2022

ksa-2

C.S.No.593 of 2018

P.VELMURUGAN,J.

Ksa-2

C.S.No.593 of 2018

03.03.2022