



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.04.2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

A.No.3941 of 2021
in C.S.No.651 of 2015

1.Mrs.A.Kala

2.Mr.V.A.Siva Palani

...Applicants/Plaintiffs

Vs.

Mr.V.A.Nagarathinam

...Respondent/Defendant

Prayer: Application filed under Order XIV Rule 8 of O.S. Rules, to pass Final Decree in the above suit in C.S.No.615 of 2015 allotting 1/3rd share in the Suit Schedule Property to the Petitioner/Plaintiff, in terms of the understanding arrived between the parties based on the preliminary decree passed by this Court on 30.11.2020 and to deliver to the petitioner the separate possession thereof.

For Applicants : Mr.S.Rajendran

For Respondent : Mr.V.Suranraj
for M/s.Eswar, Kumar & Co.

**ORDER**

This application has been filed by the applicant to pass Final Decree in the above suit in C.S.No.615 of 2015 allotting 1/3rd share in the Suit Schedule Property to the Petitioner/Plaintiff, in terms of the understanding arrived between the parties based on the preliminary decree passed by this Court on 30.11.2020 and to deliver to the petitioners the separate possession thereof.

2.The case of the plaintiffs is that the property being the land and building situated in Plot No.150, MIG, presently as per Corporation Assessment, Door No.37, 6th Cross Street, M.K.B. Nagar, Vysarpadi, Chennai – 600 039, measuring an extent of 3628 sq.ft. comprised in Survey Nos.747/1 part, 757/1 part and 752/1 part of Perambur village, Perambur Taluk, Chennai District, situated within the limits of registration sub-district of Purasaiwakkam herein after referred to as “Suit Schedule Property more fully set out in the Schedule hereunder was purchased by V.S.Arunachalam father of the plaintiffs 1 & 2 and the defendant.

3.The plaintiffs submit that their father Mr.V.S.Arunachalam

<https://www.mhc.tn.gov.in/judis> purchased the Suit Schedule Property in and by way of a registered Sale



Deed dated 06.04.1999 registered as Document No.1211 of 1999 registered before the S.R.O. Purasaiwakkam.

4.The plaintiffs further submit that their father died intestate on 05.05.2012 leaving behind the following person as his surviving legal heirs to succeed to the estate being the Suit Schedule Property viz.,

- | | | |
|--------------------------|---|--------------------------------------|
| (i).Mrs.V.A.Parameswari | - | Wife |
| (ii)Mrs.A.Kala | - | Daughter - 1 st plaintiff |
| (iii)Mr.V.A.Nagarathinam | - | Son – Defendant |
| (iv)Mr.V.A.Siva Palani | - | Son - 2 nd plaintiff |

5.The cause of action for the suit arose at Chennai within the jurisdiction of this Court where the suit property originally purchased by their father on 06.04.1999 and after his demise his legal heirs inherited the same as per Hindu Succession Act. In the meantime, Mrs.V.A.Parameswari, mother of the plaintiffs 1 & 2 and the defendant executed a registered Release Deed relinquished her $\frac{1}{4}$ right over the Suit Schedule Property in favour of the plaintiffs 1 & 2 and the defendant. Pending the same, the plaintiffs 1 & 2 approached the defendant to enter into a family arrangement to divide the Suit Schedule Property by metes and bounds to enter into Family Partition to avoid unnecessary



complications and mud-sliding allegations against each other for the sake of property. On the contrary, the defendant refused for the same and even not permitted the plaintiffs to provide some basic requirements such as food and medicines to their mother as the defendant seems to be adamant and not in good terms with the plaintiffs 1 & 2 for any sort of arrangements to divide the Suit Schedule Property by metes and bounds and subsequently.

6.The suit has been filed by the plaintiff for the various reliefs as follows:

a) to pass preliminary decree and judgment for division of the plaint schedule property into 3 equal shares by metes and bounds and to allot 2/3rd share to the plaintiffs herein as per the conventions and customs prevails as per Partition Act;

b) for appointment of Advocate Commissioner to divide the plaint schedule mentioned property by metes and bound and allotment of 2/3rd share to the plaintiffs and for separate possession thereof;

c) for a permanent injunction restraining the defendant, his men, agents, servants or anybody else claiming through or under him in any manner from alienating, mortgaging or selling his share over the suit property to any third parties;

<https://www.mhc.tn.gov.in/judis> d) to pay the cost of the suit;



e) and to pass such further or other order as this Court may deem fit and proper in the circumstances of the case and thus render justice.

7. Heard Mr.S.Rajendran, learned counsel appearing for the applicants/plaintiffs and Mr.V.Suranraj, learned counsel appearing for the respondent/defendant.

8. The Advocate Commissioner has been appointed by this Court and he has been directed to execute the warrant i.e. to allot 1/3rd share in the Suit Schedule Property to the plaintiffs and the defendant in terms of the understanding arrived between the parties based on the Preliminary Decree passed by this Court on 30.11.2020 and to divide and allot the Suit Schedule Property into 3 equal portions. The Suit Schedule Property was having a total extent of 3628 sq.ft. has to be divided 1/3 share.

9. On perusal of records, it is seen that the parties have agreed to divide the Suit Schedule Property into 1/3rd share as per the details as follows:

- (i) 1st plaintiff share – an extent of 1204 sq.ft. in Door No.37-A;
- (ii) 2nd plaintiff share – an extent of 1200 sq.ft. in Door No.37-B;
- (iii) Defendant share – an extent of 1224 sq.ft. in Door No.37-C.



10. On perusal of the learned Advocate Commissioner Report, it is seen that as per the sketch appended along with his report, it was mutually agreed between the parties as follows:

(i) *A – Schedule Property ear-marked in the sketch was allotted to the share of Mrs.A.Kala (1st Plaintiff)*

(ii) *B – Schedule Property ear-marked in the sketch was allotted to the share of Mr.V.A.Siva Palani (2nd Plaintiff) and*

(iii) *C – Schedule Property ear-marked in the sketch was allotted to the share of Mr.V.A.Nagarathinam (Defendant)*

(iv) *The property is surrounded by compound wall, on the North Western Side one gate was provided for entry for access to have ingress and egress for the A- Schedule Property allotted to the share of Mrs.A.Kala (1st Plaintiff). On the South Eastern Side, one gate was provided for entry was provided for access to have ingress and egress for the B – Schedule Property allotted to the share of the 2nd plaintiff Mr.Siva Palani and*

(v) *On the South West corner, one gate was provided for entry to have ingress and egress for the C – Schedule Property allotted to the share of the defendant Mr.V.A.Nagarathinam.*



11.A Schedule Property wherein a building was in existence was in possession and enjoyment of the defendant viz., V.A.Nagarathinam which was used as Kitchen and Bedroom. The parties agreed that there are E.B. Connections existing in the building and the plaintiffs 1 and 2 are in the respective portions separate E.B. Meter to be fixed and after shifting their allotted to the share of the plaintiffs, Metro Water connection, bore well and drainage connection would be allotted to the defendant and he has to vacate the premises and make arrangement to the plaintiffs to occupy the portion of the plots which has been divided and allotted to them as per the sketch. The property is feasible for all the parties as per the Advocate Commissioner and accordingly, the sketch was prepared and the same was also agreed by all the parties.

12.The defendant seeks some time for vacating the premises as he has to add some more annexe to the existing portion to shift toilet, bedroom and kitchen.

13.This Court is of the view that since he has to shift from the rear portion and he has to build some annexe to the existing portion as being family members, he sought for time. Accordingly, 2 months time is granted i.e. on or before 15.06.2022, he has to vacate and handed over the possession to the plaintiffs herein.



V.BHAVANI SUBBAROYAN, J.

pam

14.With the above said understanding, this Court is of the view that the decree has to be passed and wherever there are any repair to be done in the building which has been left by the defendant, the same can be done at the cost of the plaintiffs. The defendant will not demolish the said structure and in case any difficulty in obtaining E.B. Connection and Metro Water connection, the defendant shall cooperate and provide the same to the plaintiffs till they get a fresh connections.

15.The said understanding shall form part of this Order.

16.In view of the above, this application is allowed. There shall be no order as to costs.

06.04.2022

pam

Index: Yes/No

Speaking order: Yes/No

A.No.3941 of 2021
in C.S.No.651 of 2015