



C.S.No.360 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 10.02.2022

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.S.No.360 of 2017

S.Suganandan

.. Plaintiff

vs.

1. S.Dhayanandamoorthy

2. S.Viswanathan

.. Defendants

Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 CPC praying for the following Judgment and Decree against the defendants.

a) To declare the plaintiff's 1/3rd share each in the suit schedule properties, morefully described in the schedule hereunder and pass a preliminary decree to such effect;

b) To direct the defendants to pay the costs of the suit;

For Plaintiff : Mr.P.B.Balaji

For Defendants : No appearance



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J U D G M E N T

The suit is filed to declare the plaintiff's 1/3rd share each in the suit schedule properties, morefully described in the schedules and pass a preliminary decree by directing the defendants to pay the costs of the suit.

2. The brief facts of the case, as averred by the plaintiff in the plaint are as follows:

(i) The plaintiff and the defendants are brothers born to A.K.Shanmugam and the said A.K.Shanmugam and his wife, [parents] died, [viz., A.K.Shanmugam (father) died on 12.11.2014 and his wife (mother) predeceased their father] intestate leaving behind the plaintiff and the defendants, as their legal heirs and each of them are entitled to 1/3rd share in the assets owned by their father.

(ii) The father of the plaintiff as well as the defendants was the owner of the immovable properties located at Nos.12/43 and 14/42, Nammalwar Street, and No.37/17, Narasingaperumal Street, Choolaimedu and movable properties totaling to 10 $\frac{3}{4}$ sovereigns of gold. Since the parents of the



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plaintiff and the defendants died, the plaintiff as well as the defendants are entitled to 1/3rd share in the assets owned by their father. Further, the 1st defendant is in occupation of one of the properties and the other two properties are kept under lock and key. The plaintiff has not received any profits or any rentals from and out of the suit properties and only the defendants have been enjoying the properties.

(iii) The plaintiff approached the defendants seeking a partition of the suit properties, wherein, each of them are entitled to an equal share i.e., 1/3rd of the total assets of their father. But the defendants have been giving evasive replies for partitioning the suit properties and continuously avoiding the issue of partition for a long period. Under these circumstances, a lawyer's notice was issued to the defendants on 08.02.2017 calling upon them to settle and partition the immovable properties and movable assets, though the defendants acknowledged the notice, they have not taken any effort nor come forward with any settlement. Hence the present suit.

3. Heard the learned counsel for the plaintiff and perused the documents on record.



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4. Though defendants were served as early as on 10.02.2017 and 11.02.2017, respectively, no written statements have been filed by the defendants and hence for non-filing of the Written Statements, the defendants were set ex-parte and ex-parte evidence was ordered by this Court on 16.12.2021. Plaintiff, namely, S.Suganandan has filed the proof affidavit for his chief examination and receipt of 6 documents as documentary evidence to prove his claim. In the Ex-parte Evidence, the plaintiff examined himself as PW.1 and marked the following documents as Exs.P1 to P6, as documentary evidence, in order to prove the suit claim:-

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	P-1	02.11.1949	Certified copy of settlement deed Doc.No.2175/1949
2.	P-2	13.08.1987	Certified copy of the settlement deed Doc.No.1679/1987
3.	P-3	20.01.2015	Original patta
4.	P-4	08.02.2017	Photocopy of Lawyer's notice
5.	P-5	10.02.2017	Original acknowledgment card (2 nd defendant) dated 11.02.2017



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Witnesses examined on the side of the plaintiff:

P.W.1. - Mr.S.Suganandan

4. Considering the oral and documentary evidence, viz., Ex.P1 to Ex.P5 adduced by P.W.1, this Court is of the view that the plaintiff has proved the suit claim and hence, the Plaintiff is entitled for his 1/3rd share in the Suit Schedule Properties. Accordingly, preliminary decree for partition is granted with costs.

10.02.2022

Index:Yes/No

Web:Yes/No

Speaking order / non speaking order

ssd



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ssd

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