



WEB COPY



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2023

CORAM

THE HONOURABLE MS.JUSTICE R.N.MANJULA

TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015 and
M.P.No.1 of 2015

TOS.No.24 of 1991

- 1.K.Manavala Reddy (deceased)
 - 2.M.Panchakalyani
 - 3.M.Sivaprakasham
 - 4.S.Umeshwari
 - 5.M.Panjacharam
 - 6.M.Gunasekar
 - 7.N.Dhanalakshmi (deceased)
 - 8.M.Balasubramanian
- (plaintiffs 2 to 8 are impleaded as LR's of deceased 1st plaintiff
as per order dated 26.10.2006 made in A.No.4278 of 2006)
- 9.E.Natarajan
 - 10.N.Bharath Kumar
 - 11.N.Ranjith Kumar
- (plaintiffs 9 to 11 are impleaded as LR's of deceased 7th plaintiff
as per order dated 09.02.2023 made in A.No.784 of 2023)

... Plaintiffs

Vs.

- 1.Natesan Reddy (deceased)
- 2.Mrs.Sornammal
- 3.N.Dhasaradhan (deceased)
- 4.N.Balaraman (deceased)
- 5.N.Viswanathan



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

6.N.Vanasundari

7.N.Devagi

8.N.Vasantha

9.N.Alamelu Mangai

10.K.Parthasarathy (deceased)

(defendants 2 to 10 are impleaded as LR's of deceased 1st defendant
as per order dated 20.06.2001 made in A.No.2881 of 1998)

11.Bakkiammal

12.Prema

13.Rajeswari

14.Amudha

15.Karpagam

16.Padma Priya

(defendants 11 to 16 are impleaded as LR's of deceased 10th defendant
as per order dated 27.02.2015 made in A.No.3424 to 3426 of 2011)

17.Kuppammal

18.Rani

19.Velu

20.Nandheerswaran

21.Rajeswari

22.Visalam

23.Annammal

24.Shanthi

(defendants 17 to 24 are impleaded as per order dated
13.07.2015 made in A.No.4553 of 2011)

25.Vijayalakshmi

26.Pushpapriya

27.Jayakumar

28.Divyapriya

(defendants 25 to 28 are impleaded as LR's of deceased 4th defendant
as per order dated 28.11.2018 made in A.No.9149 of 2018)

29.D.Kasthuri

30.P.Gandhimathi

31.R.Devi Kamatchi



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

32.D.Mohan

33.D.Suresh

(defendants 29 to 33 are impleaded as LR's of deceased 3rd defendant
as per order dated 09.02.2023 made in A.No.787 of 2023)

... Defendants

PRAYER : Testamentary Original Suit filed under Sections 232 and 276
of the Indian Succession Act read with Order XXV Rule 5 of the Original
Side Rules, praying to grant Letters of Administration with the Will to him
as the brother of the said deceased Andalammal having effect throughout
the State of Tamil Nadu.

For Plaintiffs : Mr.K.P.Gopalakrishnan

For Defendants : Mr.J.R.K.Bhavanantham for D2 to D9,
D11 to D14, D16, D17, D25 to D33
: Mr.Francis Cedric D Cruz for D10
: Ms.R.Nirmala Devi for D18 to D24

C.S.No.251 of 2011

- 1.Dasarathan (Deceased)
- 2.Balaraman (Deceased)
- 3.Vishwanathan
- 4.Vanasundari
- 5.Devaki
- 6.Vasantha
- 7.Alamelu
- 8.Bakkiammal
- 9.Prema
- 10.Rajeswari
- 11.Amudha
- 12.Karpagam
- 13.Padmapriya
- 14.Vijayalakshmi



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

15.Pushpapriya

16.Divyapriya

(Plaintiffs 14 to 16 are the legal heirs of deceased 2nd plaintiff and they were brought on record as per order dated 07.11.2019 in A.No.7601 of 2019)

17.D.Kasthuri

18.P.Gandhimathy

19.R.Devi Kamatchi

20.D.Mohan

21.D.Suresh

(the plaintiffs 17 to 21 are the legal heirs of the 1st plaintiff and were brought on record as per order dated 15.11.2021 & 29.11.2021 passed in A.Nos.3992 & 3993 of 2021)

... Plaintiffs

Vs.

1.Kuppammal

2.Rani

3.Velu

4.Nandheerswaran

5.Rajeswari

6.Visalam

7.Annammal

8.Shanthi

9.Panchammal

10.Siva Prakasam

11.Umeswari

12.Lakshmi

13.Gunasekaran

14.Panchacharam

15.Balasubramani

16.Jayakumar



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

(The 16th defendant is the legal heir of the deceased
2nd plaintiff and was brought on record vide dated 07.11.2019
passed in Application No.7601 of 2019)

... Defendants

Prayer: Civil Suit filed under Order IV Rule 1 of the Original Side Rules
r/w. Order VII Rule 1 and 2 of the Code of Civil Procedure, praying to
pass a judgment and decree in favour of the plaintiffs and as against the
defendants as follows:

a) to pass preliminary decree of partition declaring 1/4th share to the
plaintiffs 1 to 7 and another 1/4th share to the plaintiffs 8 to 13 totaling 1/2
share in the plaint 'A', 'B', 'C' and 'D' schedule properties and pass final
decree for partition of the share in the aforesaid manner by metes and
bounds by appointment of Advocate Commissioner.

b) To grant mandatory injunction by directing the defendants 11 and
12 to remove unauthorized construction put up on Plaint 'C' schedule
properties and make it available for partition into equal shares.

c) directing the defendants to pay the costs of the suit.

For Plaintiffs : Mr.J.R.K.Bhavanantham

For Defendants : Mr.K.P.Gopalakrishnan for D9 to D15
D1 to D8 – set exparte

S.A.No.721 of 2015

- 1.Backiammal
- 2.Prema
- 3.Rajeswari



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

4.Amudha
5.Karpagam
6.Padmapriya

... Appellants

1.Lakshmi
2.The Commissioner,
Corporation of Chennai,
Park Town, Chennai 600 003.
3.The Junior Engineer,
Office of Corporation of Chennai,
Zone – 3, Ward No.34, Division No.7,
Nattal Garden II Street, Perambur,
Chennai 600 011.

... Respondents

PRAYER : Second Appeal filed under Section 100 of CPC., to set aside the judgment and decree dated 16.09.2004 passed in A.S.No.82 of 2013 on the file of the learned 1st Additional Judge, City Civil Court, at Chennai confirming the judgment and decree dated 01.03.2012 passed in O.S.No.14738 of 2010 on the file of the learned XVII Assistant Judge, City Civil Court at Chennai and decree the suit.

For Appellants : Mr.J.R.K.Bhavanantham

For Respondents : Mr.K.P.Gopalakrishnan for R1

COMMON JUDGMENT

The Testamentary Original Suit has been filed to grant Letters of Administration with the Will to deceased plaintiff as the brother of the



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

testator deceased Andalammal having effect throughout the State of Tamil Nadu.

2. The Civil Suit has been filed by the plaintiffs to pass preliminary decree of partition declaring $1/4^{\text{th}}$ share to the plaintiffs 1 to 7 and another $1/4^{\text{th}}$ share to the plaintiffs 8 to 13 totaling $1/2$ share in the plaint 'A', 'B', 'C' and 'D' schedule properties and pass final decree for partition of the share in the aforesaid manner by metes and bounds by appointment of Advocate Commissioner and for mandatory injunction by directing the defendants 11 and 12 to remove unauthorized construction put up on Plaint 'C' schedule properties and make it available for partition into equal shares.

3. The Second Appeal has been filed to set aside the judgment and decree dated 16.09.2004 passed in A.S.No.82 of 2013 on the file of the learned 1st Additional Judge, City Civil Court, at Chennai confirming the judgment and decree dated 01.03.2012 passed in O.S.No.14738 of 2010 on the file of the learned XVII Assistant Judge, City Civil Court at Chennai and decree the suit.



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

WEB COPY

4. Heard the learned counsels for the parties in both the Suits and Second Appeal.

5. The suit properties belonged to one Andalammal and she had executed her last Will in respect of the suit schedule properties. The said Andalammal died on 28.09.1977. The deceased Andalammal did not have any children and her husband also pre-deceased her. In the said Will, the deceased Andalammal has not appointed any one as Executor of the Will. Mr.K.Manavala Reddy / deceased plaintiff is one of brothers of the deceased Andalammal and one of the beneficiaries of the Will.

6. Therefore, Mr.K.Manavala Reddy, brother of the testator has filed O.P.No.230 of 1989, on the file of this Court, for grant of Letters of Administration in respect of the Will said to have been executed by Andalammal on 01.09.1977. Mr.Natesa Reddy and Mr.Parthasarathy who are the other brothers of the deceased Andalammal, lodged caveat opposing the genuineness of the Will. Hence, the said Original Petition in O.P.No.230 of 1989 was converted as TOS.No.24 of 1991.



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

WEB COPY

7. During the pendency of the proceedings, one of the legatees Manavala Reddy and his daughter died. The legal heirs of the deceased Manavala Reddy and his daughter Dhanalakshmi have been impleaded as plaintiffs. Since the defendants also died, their legal heirs have been impleaded. As of now, there are totally 33 defendants including the deceased defendants. Out of the above defendants, D1 to D4, D10 died and D5 to D9 and D11 to D33 have given their consent to decree the suit in favour of the plaintiffs in TOS No.24 of 1991. Since all the contesting defendants have given their consent, the suit in TOS No.24 of 1991 has to be allowed as prayed for. Hence, the suit is decreed and the letters of administration is granted in favour of the plaintiffs.

8. In the result,

(i) The suit in TOS No.24 of 1991 is decreed in terms of the consent affidavits filed by the defendants.

(ii) The Letters of Administration, having effect throughout Tamil



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

Nadu, shall be issued in favour of the plaintiffs in respect of the Will executed on 01.09.1977 by Andalammal in favour of the plaintiffs.

(iii) The plaintiffs are directed to duly administer the estate of the deceased as mentioned in the suit schedule.

(iv) The plaintiffs shall execute a security bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) in favour of the Assistant Registrar (O.S-II), High Court, Madras.

(v) The plaintiffs are further directed to render true and correct accounts once in a year.

(vi) No costs.

9. Some of the defendants in TOS.No.24 of 1991 have filed the suit against the plaintiffs in C.S.No.251 of 2011 seeking for partition and the same is left as not pressed. Hence, the suit in C.S.No.251 of 2011, shall be dismissed as withdrawn. The learned counsel for the plaintiffs has also made his endorsement to that effect. No costs.



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

WEB COPY

10. Some of the defendants in TOS.No.24 of 1991 have also filed a suit in O.S.No.14738 of 2010 seeking the relief of declaration, permanent and mandatory injunction and the same was dismissed by XVII Assistant Judge, City Civil Court at Chennai on 01.03.2012. Against the said judgment, a first appeal has been preferred in A.S.No.82 of 2013 and the Appeal has also been dismissed by I Additional District Judge, City Civil Court, Chennai, on 16.09.2014. The appellants have preferred the present Second Appeal challenging the judgment passed in A.S.No.82 of 2013.

11. Since the appellants in the Second Appeal No.721 of 2015 themselves have consented to grant letters of administration as prayed by the plaintiffs in TOS No.24 of 1991 and the properties involved are one and the same, nothing remains to be considered in the Second Appeal and the same is dismissed as infructuous. Consequently, connected miscellaneous petition is closed. No costs.

Index : Yes/No
Internet : Yes/ No
gsk

13.03.2023



WEB COPY



TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

R.N.MANJULA,J.

gsk

To

- 1.I Additional District Judge,
City Civil Court, Chennai.
- 2.XVII Assistant Judge,
City Civil Court,
Chennai.
- 3.The Commissioner,
Corporation of Chennai,
Park Town, Chennai 600 003.
- 4.The Junior Engineer,
Office of Corporation of Chennai,
Zone – 3, Ward No.34, Division No.7,
Nattal Garden II Street, Perambur,
Chennai 600 011.

TOS.No.24 of 1991 and
C.S.No.251 of 2011 and
S.A.No.721 of 2015

13.03.2023