



IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>31.08.2023</i>
<i>Pronounced on</i>	<i>26.09.2023</i>

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULAC.S. No.66 of 2021

1. G.Naveen Kumar
2. G.Nandhini Devi

... Plaintiffs

Vs.

1. S.Saradha
2. S.Karunakaran
3. T.Swathilakshmi
4. T.Rajikumar @ RajiVinayakumar

... Defendants

Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w.
Order VII Rule 1 of Civil Procedure Code, to pass a judgment and decree:

a) for a preliminary decree declaring the plaintiffs half share in the suit schedule property morefully described in the schedule appended hereunder and effect division of the property into two half shares and put the plaintiffs in possession of one such half share subject to the life interest of S.Saratha, S.Gnanasekaran and S.Thiyagarajan;

b) for appoint of an Advocate Commissioner to effect division of the property and in the unlikely of the division of the property is not feasible or plausible by metes and bounds, effect sale of the property in entirety and



allocate one half share of the sale proceeds to the plaintiffs after defraying all the expenses that may be incurred in relation to the sale of the suit schedule mentioned property ;

c) for permanent injunction restraining the defendants 1 & 2, their men, servants or agents or anyone claiming under them from in any manner interfering with the plaintiff's right, peaceful possession and enjoyment of suit schedule property subject to the life interest of Saratha, S.Gnanasekaran and S.Thiyagarajan except in accordance with law;

d) for permanent injunction restraining the defendants, their men, servants or agents or anyone claiming under them from in any manner encumbering or alienating or dealing with the suit schedule mentioned property except in accordance with law, more particularly grant made in O.P.No.449 of 1988 dated 07.12.1988 and the Will dated 8th January, 1987;

e) grant such further or other reliefs;

f) cost of the suit.

For Plaintiffs : Mr. R.Thiagarajan

For Defendants : Set exparte

JUDGMENT

This suit has been filed seeking for a preliminary decree declaring the



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plaintiffs' half share in the suit schedule property morefully described in the schedule appended hereunder and effect division of the property into two half shares and put the plaintiffs in possession of one such half share subject to the life interest of S.Saratha, S.Gnanasekaran and S.Thiyagarajan, for appointment of an Advocate Commissioner to effect division of the property and effect sale of the property in entirety and allocate one half share of the sale proceeds to the plaintiffs after defraying all the expenses that may be incurred in relation to the sale of the suit schedule mentioned property, for permanent injunction restraining the defendants 1 & 2, their men, servants or agents or anyone claiming under them from in any manner interfering with the plaintiff's right, peaceful possession and enjoyment of suit schedule property subject to the life interest of Saratha, S.Gnanasekaran and S.Thiyagarajan except in accordance with law and for permanent injunction restraining the defendants, their men, servants or agents or anyone claiming under them from in any manner encumbering or alienating or dealing with the suit schedule mentioned property except in accordance with law, more particularly grant made in O.P.No.449 of 1988 dated 07.12.1988 and the Will dated 8th January, 1987.



2. The averments in the plaint are as follows:

The suit property originally belonged to the paternal grandfather of the plaintiffs by name G.Saman. The first defendant is the wife of G.Saman. The deceased Saman had four daughters and three sons. The suit property was the self acquired property of G.Saman by virtue of a registered sale deed dated 05.04.1954. Out of an extent of 35 cents, G.Saman sold 17 $\frac{3}{4}$ Cents on 16.09.1967. On 08.01.1987 he had executed a Will in favour of his wife and his two sons S.Gnanasekaran and S.Thiyagarajan and by giving absolute interest in favour of the plaintiffs and defendants 3 and 4 who are the children of S.Gnanasekaran and S.Thiyagarajan.

2.1. The said G.Saman died on 14.05.1987. Thereafter, the sole executor of the Will by name S.Thiyagarajan has been given with the duty to sell two grounds in the remaining 17 $\frac{3}{4}$ cents for the purpose of meeting out the marriage expenses of his three daughters. In respect of the suit property, the wife of G.Saman and his two sons S.Gnanasekaran, S.Thiyagarajan shall have life interest and after their life interest, their children who are the plaintiffs herein will get absolute interest over the same. The Will executed by G.Saman was also probated by filing an Original Petition in O.P.No.449



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of 1988 by virtue of an order dated 07.12.1988 passed by this Court. The two sons of the testator namely S.Gnanasekaran and S.Thiyagarajan have given up their life interest in favour of their children who are the plaintiffs and defendants 3 and 4. Though the second defendant is also a son of G.Saman, he was disinherited from acquiring any properties of his father. Since the first defendant and the second defendant are trying to alienate the suit property, the plaintiffs have filed the suit for partition by seeking the relief of partition and other consequential reliefs.

3. The defendants 3 and 4 have filed their written statement but the written statement does not deny the claim of the plaintiffs. Though the first and second defendant appeared through counsel, they did not file any written statement. Hence all the defendants remained *ex parte*.

4. The first respondent examined himself as P.W.1 and Exs.P1 to P10 were marked. The last Will and Testament of G.Saman has been marked as Ex.P1. As per the said Will, the first defendant has given with the life interest in respect of the properties belonging to the original owner G.Saman. The Will contains two properties out of which one property was already sold



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and the suit property is the remaining one. Even as per the terms of the Will, one of the sons by name S.Gnanasekar who was appointed as the sole executor of the Will was given with the responsibility of selling one item of the property belonging to the testator for meeting out the marriage expenses of his daughter. So far as the suit property is concerned, the testator had given only life interest to his wife, the first defendant herein and his two sons S.Gnanasekar and S.Thiyagarajan.

5. The said G.Saman died on 14.05.1987. The Will was probated by an order of this Court dated 07.12.1988 made in O.P.No.449 of 1988. The death certificate of Saman is produced as Ex.P2. The Will along with the order of probate dated 15.11.1988 is available as Ex.P1. As per the arrangement made in the Will, the first defendant has got only life interest and she does not have any absolute interest in the suit property. However the plaintiffs cannot claim division of the property during the lifetime of the first defendant, who has the life interest in the property.

6. No doubt the plaintiffs are entitled to half share in the suit property subject to the life interest created in favour of the first defendant and the



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other two sons S.Gnanasekaran and S.Thiyagarajan. As stated already the said S.Gnanasekaran and S.Thiyagarajan have surrendered their life interest in favour of their children. Whatever may be the case, the life interest of first defendant is still subsisting. So the plaintiffs are entitled to get half share in the suit property subject to the life interest of the first defendant and to that extent, they can only be given with the relief of declaration. Even though the two sons of late G.Saman have surrendered their life interest, the first defendant who is the grandmother of the plaintiffs still have the right of possession and enjoyment over the suit schedule property by virtue of her life interest created over the same. If the defendants 1 and 2 attempts to encumber or alienate the property, that would be against the terms of the Will and they are not entitled to do the same.

7. So in the given nature of right of the plaintiffs in respect of the suit schedule property, the plaintiffs are entitled to get the relief of declaration alone that they are entitled to half share in the suit schedule property subject to the life interest of the first defendant and consequential permanent injunction restraining the defendants from encumbering and alienating the suit property.



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8. Accordingly, the Civil Suit is partly decreed only in respect of the relief of declaration that the plaintiffs' have half share each in half share of the suit schedule property morefully described in the schedule subject to the life interest of the first defendant with a relief of permanent injunction restraining the defendants from encumbering and alienating the suit schedule property.

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R.N.MANJULA, J.,

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Pre-delivery Judgment in
C.S. No.66 of 2021

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