



C.S.No.224 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.10.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.224 of 2022
and O.A.Nos.660 & 661 of 2022

C.D.Malini

... Plaintiff

Versus

1.C.D.Rajkumar

2.C.D.Balakrishnan

3.M/s.Vanavil Estate

A Partnership Firm

Represented by its Partner

C.Balakrishnan

S/o.K.Chandrakesavan

Having office at No.3

Duraisami Reddy Street

Chennai – 600 045

... Defendants

Prayer : Complaint filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Code of Civil Procedure, to pass a judgment and decree to :

a) for a preliminary decree for partition by the division of the plaint



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- schedule property Item Nos.I to IX into 3 equal shares and allot one such share to the plaintiff and divide the same by metes and bounds and in respect of Item No.X the same to be divided into 2 equal shares and one such share be allotted to the plaintiff and the remaining $\frac{1}{2}$ share to be equally divided between defendants 1 and 2.
- b) for the appointment of Advocate Commissioner for effecting partition in terms of preliminary decree.
 - c) Permanent injunction restraining the 3rd defendant from putting up any construction or indulging in the act of altering the nature of the property which is morefully described in Schedule item No.X Property.
 - d) Permanent injunction restraining the defendant 1 & 2 not to deal with the properties which is morefully described in the Schedule to the plaint.
 - e) To declare that the sale agreement dated 06.12.2021 entered into between the defendants 1 and 2 in favour of 3rd defendant is null and void.
 - f) Directing the defendants to pay the costs



For Plaintiff : Mr.K.Venkateswaran
For Defendants : No appearance
JUDGMENT

This Civil Suit has been laid for

- i. A preliminary decree for partition by the division of the plaint schedule property Item Nos.I to IX into 3 equal shares and allot one such share to the plaintiff and divide the same by metes and bounds and in respect of Item No.X the same to be divided into 2 equal shares and one such share be allotted to the plaintiff and the remaining $\frac{1}{2}$ share to be equally divided between defendants 1 and 2.
- ii. for the appointment of Advocate Commissioner for effecting partition in terms of preliminary decree.
- iii. Permanent injunction restraining the 3rd defendant from putting up any construction or indulging in the act of altering the nature of the property which is morefully described in Schedule item No.X Property.
- iv. Permanent injunction restraining the defendant 1 & 2 not to deal with the properties which is morefully described in the Schedule to the plaint.



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v. To declare that the sale agreement dated 06.12.2021 entered into between the defendants 1 and 2 in favour of 3rd defendant is null and void.

vi. Directing the defendants to pay the costs

2.The brief facts of the case are as under :

2.1.The plaintiff is the sister of the defendants 1 and 2.

2.2.It is the case of the plaintiff that in the suit properties, Item No.1 to 9 belong to her father and Item No. 10 enjoyed by her father and mother jointly. The father of the plaintiff Dhanakoti died intestate leaving behind the plaintiff and the defendants as legal heirs. The mother had predeceased. It is the further contention that in respect of Item No.10, her mother executed a will in favour of the plaintiff. Hence, seeks to partition for 1/3rd share in respect of Item Nos.I to IX and half share in respect of Item No.X.

3.It is also the contention of the plaintiff that when the matter stood thus, without there being the partition of the properties, the defendants



1 and 2 are trying to alienate the properties in favour of the third defendant.

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4.The defendants have filed their written statement admitting Item Nos.I to IX as family properties of the father Dhanakotti and available for partition. The parties are enjoying for convenience. However, disputed the will in respect of Item No.X.

5. As the defendants has not disputed the character of the property and only disputed the will in respect of Item No.X, this Court is of the view that no issue arising in this case for determination as far as Item Nos.I to IX, the judgment can be passed on the basis of admission made in the pleadings under Order XII Rule 6 of C.P.C. When the written statement is very clear about the character of the properties and the shares are also admitted, this Court passes judgement on admission in the pleadings.

6. Accordingly, preliminary decree is passed in favour of the plaintiff and defendants 1 and 2 each entitled to $1/3^{\text{rd}}$ share in respect of Item Nos.I to IX. As far as the Item No.X is concerned, it is stated by the learned counsel appearing for the plaintiff that probate proceedings is also



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pending in O.P.No. 35 of 2023. Such view of the matter, the parties are relegated to probate proceedings in respect of Item No.X alone.

7. In the result, preliminary decree is passed for division of Item Nos.I to IX of the suit properties into 3 equal shares and allot one such share to the plaintiff. It is open to the parties to divide the properties on the basis of outcome of the probate proceedings as far as Item No.10 is concerned. However, bearing in mind the relationship between the parties, the parties are directed to bear their own costs in the suit. Consequently, connected original applications stands closed.

31.10.2023

dhk

Internet : Yes

Index : Yes / No

Speaking order / Non Speaking order



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To

The Sub-Assistant Registrar,
Original Side,
High Court, Madras.



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N. SATHISH KUMAR, J.

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