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C.S No.272 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 25.08.2023

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.272 of 2015

1.B.Lavanya

2.G.S.Padmavathi

... Plaintiffs

vs.

1.M.S.Vijayalakshmi

2.P.Revathy

... Defendants

Prayer: Civil Suit filed under Order VII Rule 1 of Criminal Procedure Code read with Order IV Rule 1 of O.S Rules, praying for the following judgment and decree as against the defendants:

a) partitioning the schedule A mentioned property by metes and bounds by three equal shares ad allot 1/3rd share each to the plaintiffs;

b) partitioning the schedule B mentioned property by metes and bounds by four equal shares and allot 1/4th share each to the plaintiffs.

c) To appoint an Advocate Commissioner to divide schedule A mentioned property into three equal share and allot 1/3rd share each to the plaintiffs and to divide the schedule B mentioned property into four equal share and allot 1/4th share each to the plaintiffs.



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d) dividing the terminal benefits, arrears of salary, insurance, amounts and other dues payable to Mr.C.Subramaniam, Special Grade Office Assistant by the Director of Land Reforms, Chepauk, Chennai-05 into four equal share and allot 1/4th share each to the plaintiffs.

e) directing the first defendant to pay the past mesne profits of Rs.80,000/- to the plaintiffs for the months of December 2013 to March 2014.

f) and pay the future mesne profits every month to each of the plaintiffs as their 1/3rd share in the income of the schedule A property from the date of plaint till date of accounts.

g) for costs of the suit.

For Plaintiffs : Ms.T.Surekha
For M/s.A.Saravanan

For Defendants : Set exparte

J U D G M E N T

This Civil Suit has been filed for partition, past and future mesne profits and for costs.



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2.0 The brief facts of the case of the plaintiffs are as follows:

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The suit schedule A property viz., the house and premises bearing Old No.7, New No.8, Issac Street, Chenna-600 004 comprised in R.S No.9870, measuring 690 sq.ft. was originally owned by Chitu Balamani, wife of Chitu Krishnaiya Chetty and she settled the same in favour of C.Subramaniam, son of late C.Raghavalu Chetty under the Gift Deed dated 23.10.1980 registered as document No.611 of 1980. The said Subramaniam is the father of the plaintiffs and the defendants. The said Subramaniam during his life time executed a settlement deed dated 11.11.2005 registered as document no.1128 of 2005 in favour of the plaintiffs and defendants, settling the suit A property absolutely in favour of the plaintiffs and the defendants retaining life interest with him. Later, the second defendant who had divorced earlier and was residing with the said Subramaniam, her father, got married against his wishes and caused mental agony to him and that prompted him to cancel the said settlement deed dated 11.11.2005 under the cancellation deed dated 23.08.2006, registered as document No.986 of 2006 and on the same day executed a fresh settlement deed dated 23.08.2006, registered as document No.987 of 2006 in favour of the



plaintiffs and the first defendant settling A schedule property absolutely in equal share retaining life interest with him. No mutation of records took place and the said Subramaniam was managing the property until his life time.

2.01. Pursuant to the settlement deed dated 23.08.2006, the possession of suit A schedule property continued to be with their father and he paid taxes and dues for the said property in his name till his death. Their father Subramaniam had conducted the marriage of plaintiffs and defendants during his lifetime and met all the expenses for the marriage and provided equally to the plaintiffs and defendants as dowry in the form of jewellery and other sridhana properties during their respective marriages. The second defendant was also provided with jewellery and sridhana properties like other daughters during her first marriage by their father. Even after the divorce, she continued to retain the said properties with her. Their father did not use the jewellery and sridhana properties of second defendant for the marriage of the first defendant. The father of the plaintiffs and defendants was allotted a Plot No.3/43, EWS-B Type, Manali Housing



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Scheme Phase II of Tamilnadu Housing Board vide order dated 22.07.1992

bearing ANA18/29812/90. He has paid the entire cost of allotment of plot and is absolute owner of the same. The said property is morefully described in B schedule. The plaintiffs and defendants are equally entitled to 1/4th share each in the said property. When their father Subramaniam was employed as Special Grade Office Assistant in the office of Director of Land Reforms, Chepayk, Chennai-5, he died intestate on 18.02.2013 leaving behind the plaintiffs and defendants as his only legal heirs. After his demise, the last rites were conducted by the plaintiffs and first defendant as per his last wish by contributing equally for the ceremonies and other expenditures. Thus, the plaintiffs and first defendant had acted as per the settlement deed dated 23.08.2006 and as per his wish. Their mother Pushpalatha predeceased her father on 31.03.2005. As the only legal heirs of Subramaniam, the plaintiffs and the defendants have become absolute owners of suit B schedule property and the terminal benefits payable by his employer. After the second marriage, the second defendant was living away and her whereabouts was not known to the plaintiffs and after completing the rituals of their father, the second defendant came to suit A schedule property



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and attempted to occupy the same and created nuisance with the help of hooligans. Hence a police complaint was lodged against the second defendant. The second defendant filed O.S No.2184 of 2013 on the file of the XII Assistant City Civil Court, Chennai against the plaintiffs and the first defendant challenging the cancellation of the settlement deed dated 11.11.2005 and the settlement deed dated 23.08.2006 and the suit is still pending.

2.02. After the death of their father, the plaintiffs and the first defendant were not able to manage the lodging house in suit A schedule property and therefore, appointed the husband of first defendant Mr.M.Srinivasalu as their power agent under the deed of power of attorney dated 08.03.2013. The said Srinivasalu acted against the interest of the plaintiffs and demolished a portion of the ground floor and attempted to convert it into a commercial building and let out the same that was not authorised by the plaintiffs. Hence, a notice dated 13.03.2004 was sent to cancel the said power of attorney and a suit in O.S No.1610 of 2014 was filed on the file of the XIII Assistant City Civil Court, Chennai and obtained



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an order of status quo. In spite of the said order, the said Srinivasalu, the husband of the 1st defendant was creating problems in the suit A schedule property which prompted the plaintiffs to issue notice dated 29.03.2014 to the defendants for partition.

2.03. It is further stated that a sum of Rs.30,000/- was tentatively earned as income from schedule A property by the first defendant. The plaintiffs are 2/3rd share holders and are entitled to Rs.20,000/- every month from the first defendant. The first defendant appropriated the entire mesne profits from schedule A property. The plaintiffs are claiming four months income from December 2013 to March 2014 of Rs.80,000/- as mesne profits from schedule A property from the first defendant. The plaintiffs undertake to pay necessary court fee for the future mesne profits as and when such amount is determined and ordered to be paid by this Court. After the demise of their father Subramaniam, the terminal benefits, arrears of salary, insurance amount are liable to be paid by the Director of Land Reforms, Chepauk, Chennai-05 and they are not paid till date and the plaintiffs and defendants are entitled to 1/4th share equally. Hence the suit.



3. Though summons served on the 1st defendant, he did not enter appearance before this Court and hence, he was set exparte 26.03.2021.

4. The averments made in the written statement filed by the second defendant in brief are as follows:

All the allegations contained in the plaint are denied except those that are specifically admitted hereunder. The second defendant got married in the year 1992 and due to misunderstanding got divorced and was staying with her father. Her mother died in 2005. All her jewels were in custody of her father. This defendant's jewels along with her mother jewels were also divided into 4 parts and retained by the defendant. This defendant spent for her medical need, paid her credit card bills, property tax and other utility bills of the schedule property. Initially, the settlement deed dated 11.11.2005 vide document No.1128 of 2005 was executed between the plaintiffs and defendants equally. The jewels of the second defendant was given to the marriage of the 1st defendant. This defendant was fell in love with one Palaniappan, a car driver who belongs to schedule caste and lived at Kumbakonam. This defendant attended the death ceremonies of her



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father and later, came to know about the cancellation of settlement deed and subsequent new settlement deed. Hence the suit is liable to be dismissed.

5. On the side of the plaintiffs, the 1st plaintiff examined herself as P.W.1 and Ex.P.1 to Ex.P.9 were marked. On the side of the 2nd defendant, the 2nd defendant examined herself as DW1 and Ex.D1 to D10 were marked and after completion of both side evidence, despite several opportunities, neither the counsel nor the 2nd defendant appear before this Court. Hence, the 2nd defendant was set exparte on 01.08.2023.

6. Heard the learned counsel for the plaintiff and perused the records.

7. PW.1, in her evidence has stated that suit schedule A & B properties belonged to the father of both the plaintiffs and the defendants namely, C.Subramaniam and he executed a settlement deed in favour of the plaintiffs and 1st defendant in respect of A schedule property. Ex.P4 is the certified copy of the settlement deed dated 23.08.2006. Both the father and



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mother died intestate leaving behind the plaintiffs and the defendants as their surviving legal heirs. Ex.P9 is the photocopy of the death certificate of mother of the plaintiffs. She further stated that the father of the plaintiffs and defendants was allotted a Plot No.3/43, EWS-B Type, Manali Housing Scheme Phase II of Tamilnadu Housing Board, which is the suit B schedule property. Ex.P1 is the original allotment letter dated 22.07.1992 issued by the Tamil Nadu Housing Board in respect of B schedule property in favour of the plaintiffs' father C.Subramaniam. Ex.P2 is the original sketch dated 04.08.1992. The plaintiffs' father was working as Special Grade Office Assistant in the office of the Director of Lands Reforms, Chepauk, Chennai-600 005. Ex.P3 is the original order dated 09.02.2001 issued by the Director of Land Reforms to plaintiffs' father. Ex.P5 is the letter dated 12.02.2013 sent by the plaintiffs father to the Tamil Nadu Housing Board seeking to execute a sale deed in favour of him. Ex.P6 is the original letter issued by the AG office to the first plaintiff calling for authorisation in respect of pension. Ex.P7 is the copy of legal notice sent by the plaintiffs to the defendants with acknowledgment card, demanding partition of the suit properties. Ex.P8 is the original encumbrance certificate dated 10.04.2014 in



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respect of B schedule property. PW1 has further stated that the terminal benefits along with other arrears of salary insurance amounts and other dues payable to their father C.Subramaniam shall be divided into four equal shares and allotted 1/4th share each. The mesne profits received by the first defendant's husband amounting to Rs.80,000/- from December 2013 to March 2014 and future mesne profits till the date of sale deed of suit A property are to be paid to each of the plaintiffs equally. Since the defendants have not come forward to partition the suit schedule properties amicably, the plaintiff has filed this suit for partition.

8. From the evidence of P.W.1 and the documents filed, it is proved that suit A and B schedule properties belonged to one C.Subramaniam, who is the father of both the plaintiffs and the defendants. Admittedly, pending the present suit, the plaintiffs and first defendant entered into a compromise and as absolute owner, sold the schedule "A" property to a third party. It is also proved that both the plaintiffs and the defendants are entitled to 1/4th equal share each in B schedule properties and also 1/4th share of terminal benefits and other dues payable to their deceased father. Though the 2nd



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defendant was examined in full, he has failed to appear before this Court to establish her case, despite several opportunities and hence, she was set exparte. Therefore, the evidence of P.W.1 and documents filed on behalf of the plaintiffs remain unchallenged and there is no rebuttal evidence against the case of the plaintiffs. Hence, the plaintiffs have proved her case.

9. The learned counsel for the plaintiffs submitted that pending the present suit, the plaintiffs and first defendant entered into a compromise and as absolute owner, sold the schedule A property to one Devi Chand by two sale deeds dated 25.06.2014 vide document No.896/2013 on the file of SRO, Sowcarpet by the plaintiffs and another sale deed dated 02.06.2014 vide document No.738/2014 by the first defendant. Ex.D1 and D2 are the certified copy of sale deeds dated 02.06.2014 and 25.06.2014 respectively. Further, the learned counsel for the plaintiffs submitted that since the suit A schedule property has already been sold, the plaintiffs are not pressing the suit in respect of suit A schedule property i.e. prayers "a" and "c" and also mesne profits derives from A schedule property i.e prayers "e" and "f".



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10. In the result, both the plaintiffs and the defendants are equally entitled to 1/4th share in the suit B schedule property by dividing the same by metes and bounds and also they are entitled to 1/4th share in the terminal benefits, arrears of salary, insurance amounts and other dues payable to their deceased father C.Subramaniam. Accordingly, a preliminary decree is passed in respect of prayers "b" and "d". The suit is dismissed as not pressed in respect of prayers "a, c, e and f. Considering the relationship between the parties, there shall be no order as to costs.

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Index : Yes/No
Speaking/Non-speaking order
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Witnesses examined on the side of the plaintiffs:

P.W.1. - B.Lavanya



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Exhibits produced on the side of the plaintiffs:

Sl.No.	Exhibits	Date	Description of documents
1	P1	22.07.1992	Original Letter between the Tamil Nadu Housing Board and C.Subramaniam, father of the plaintiff.
2	P2	04.08.1992	Original Sketch
3	P3	09.02.2001	Original order issued by Director of Land Reforms to the plaintiff's father
4	P4	23.08.2006	Certified copy of settlement deed
5	P5	12.02.2013	Letter sent by the plaintiff's father to the Tamil Nadu Housing Board
6	P6	29.08.2013	Original letter sent by the AG office to the first plaintiff.
7	P7	29.03.2014	Office copy of notice sent to the defendant along with acknowledgment card
8	P8	10.04.2014	Original Encumbrance certificate
9	P9	28.04.2005	Photocopy of death certificate of C.Pushpalatha, mother of the plaintiffs and defendants.

Witnesses examined on the side of the 2nd defendant:

DW1 - P. Revathi



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Exhibits produced on the side of the 2nd defendant:

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S.No.	Exhibits	Date	Description of documents
1.	D-1	02.06.2014	Certified copy of sale deed
2.	D-2	25.06.2014	Certified copy of sale deed
3.	D-3	30.07.1964	True copy of Partition Deed
4.	D-4	23.10.1980	Online certified copy of Gift settlement deed
5.	D-5	11.11.2005	Online print out certified copy of settlement deed
6.	D-6	23.08.2006	Online print out certified copy of cancellation of settlement deed.
7.	D-7	23.08.2006	Online print out certified copy of settlement deed
8.	D-8	09.03.2013	Online print out certified copy of death certificate of plaintiff's father C.Subramaniam
9.	D-9	28.03.2013	Original Legal heirship certificate
10.	D-10		Medical report of Jipmor Hospital, Puducherry-6.

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