



C.S.No.216 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.12.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.216 of 2019

1. A.Venugopal
2. S.Padmini
3. A.Ragunath

... Plaintiffs

Vs

1. A.Gopalakrishnan
2. Indian Overseas Bank
Rep. by its Manager,
Rangarajapuram Branch,
No.2, Kripasankari Street,
West Mambalam, Chennai – 600 033.
3. A.Meerabai
[the first plaintiff has been transposed as the
third defendant as per the Order of this Court
dated 11.09.2023 in A.No.4775 of 2023]

... Defendants



C.S.No.216 of 2019

Civil Suit filed under Order IV Rule 1 of the High Court O.S. Rules 1956 read with Order VII Rule 1 of Civil Procedure Code, 1908 for the following decree and judgment :

a] to declare 1/5th share each of the first to fourth plaintiffs in the property bearing Door No.25/14, Mahadevan Street, West Mambalam, Chennai – 600 033, more fully described in the schedule hereunder, by passing a preliminary decree to that effect;

b] directing the first defendant to clear the subsisting dues of the second defendant and consequently directing the second defendant to deposit title documents relating to the suit property into this Court;

d] Costs of the suit

For Plaintiffs : Ms.R.V.Rukmani

For defendants : Mr.L.Sriram
for M/s.Chennai Law Firm – D1

Mr.Senthil Murugan – D3

D2 – No appearance



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C.S.No.216 of 2019

JUDGMENT

This suit has been filed for partition of the suit property into five equal shares and allot one such share to the each of the Plaintiffs and to direct the first defendant to clear the subsisting dues of the second defendant and consequently directing the second defendant to deposit title documents relating to the suit property into this Court and for costs.

2. The first plaintiff is the mother of the first defendant and the plaintiffs 2 to 4. The second defendant has been added only to show that the property has been mortgaged by the father. Thereafter, the same has been redeemed. The first plaintiff was all along with the plaintiffs and is now joined with the first defendant. Therefore, she has been transposed as the third defendant as per the Orders of this Court dated 11.09.2023.

The suit property has been purchased by the father of the plaintiffs and the first defendant on 22.01.1992. The father of the plaintiffs and the



C.S.No.216 of 2019

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first defendant died intestate on 07.09.2012. Hence, the plaintiffs have filed the present suit for partition claiming their shares.

The first defendant has filed the written statement not disputing the shares of the plaintiffs. The grievance of the first defendant is that since the plaintiffs have not taken care of their mother, in order to protect the interest of the mother, he is not inclined for partition. This is the only defence taken in the written statement.

4. On the basis of the above pleadings, the following issues have been framed for determination in the suit :

1. Whether the plaintiffs are entitled to 1/5th share each in the suit schedule property?
2. Whether the first defendant is liable to meet the second defendant's dues?



C.S.No.216 of 2019

3. Whether the first defendant is liable to reimburse the first plaintiff a sum of Rs.2,84,876/- paid by the first plaintiff to the second defendant bank?

4. Whether the defence put forth by the first defendant that unless the first plaintiff financial security is taken care of, a decree for partition cannot be passed is tenable?

5. Whether the first plaintiff voluntarily joined the remaining plaintiffs in filing the above suit?

6. To what other relief the plaintiffs are entitled?

On the side of the plaintiffs, second plaintiff examined himself as P.W.1 and Ex.P.1 to Ex.P.7 were marked.

P.W.1 – Mr.A.Venugopal

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
1.	22.01.1972	Copy of settlement deed	P-1
2.	05.02.2011	Undertaking given by the 1 st defendant	P-2
3.	16.11.2017	Letter sent by IOB Bank	P-3



C.S.No.216 of 2019

<i>S.No.</i>	<i>Date</i>	<i>Description of documents</i>	<i>Exhibit</i>
4.	21.12.2018	Computer generated death certificate of the father of the plaintiffs and the first defendant	P-4
5.	03.11.2018	Computer generated copy of Metro water receipt	P-5
6.	31.12.2017	Copy of legal notice sent by the first plaintiff to the first defendant	P-6
7.	22.01.2019	Copy of the legal notice sent by the plaintiffs to the first defendant	P-7

The suit is one for partition of the suit property left by the father of the plaintiffs and the first defendant and each of them is entitled to 1/5th share in the suit property.

Considering the nature of the lis between the parties, this Court has directed all the parties to be present before this Court. Except the third defendant, the mother of the parties, all are present, since she is aged about 72 years, she could not be present. After interacting with them, it is agreed between the parties to pass a preliminary decree. It is also agreed that the plaintiffs and the first defendant each will pay a sum of Rs.10,000/- for



C.S.No.216 of 2019

WEB COPY

maintenance of the third defendant and that amount shall be deposited by each of them every month in the account of the third defendant, which is already existing in the name of the third defendant. Both the parties are agreeable for the same.

4. Considering the very admission made by the parties submissions, as there is no triable issue and the defendants have also submitted that they have no objection in passing a preliminary decree for division of the property into 5 equal shares and allot one such share to the plaintiffs and the first and third defendants and also submissions of the learned counsel on both sides for dividing the property, invoking Order XII Rule 6 of CPC, I am inclined to dispose of the suit by passing a preliminary decree.

5. Accordingly, preliminary decree is passed for dividing the suit property by metes and bounds into five equal shares and allotting one such share to of the each plaintiff. The defendants 1 and 3 are also entitled to 1/5th share each and on payment of Court Fee, their shares will be allotted to



C.S.No.216 of 2019

WEB COPY

them in the final decree separately. It is also agreed between the parties that there shall not be any claim in respect of past mesne profits. The the plaintiffs are entitled for a share in the rental income of Rs.40000/- and same shall be worked out in the final decree proceedings. Considering the relationship between the parties, there shall be no Order as to costs.

14.12.2023

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Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order



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C.S.No.216 of 2019

N.SATHISH KUMAR, J.

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C.S.No.216 of 2019

14.12.2023