



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.10.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.136 of 2022

M.Saravanan

.. Plaintiff

vs.

Mr.M.Kumaran

.. Defendant

Civil Suit filed under Order IV Rule 1 of High Court O.S. Rules 1956 read with Order VII Rule 1 & 2 of CPC for a judgment and decree against the defendant as follows:

(i) for a preliminary Decree for partition of the suit schedule mentioned properties, into 1/2 share and allot and put the plaintiff in possession of one such share, by metes and bounds and with reference to the value thereof;

(ii) for appointing an Advocate Commissioner to divide the plaintiff schedule properties and allot the plaintiff's share and put him in possession thereof in accordance with the preliminary decree;

(iii) for a permanent injunction restraining the defendant herein from in



any way encumbering the suit schedule properties;

(iv) Directing the Defendant to pay the cost of the suit;

(v) For such other relief or reliefs as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

For plaintiff : M/s.A.Umasankar

For Defendant : Mr.V.Meenakshi Sundaram

J U D G M E N T

This suit has been filed for partition of the suit schedule mentioned properties in accordance with the preliminary decree, into half share and allot them to the plaintiff and the defendant.

2. The plaintiff and the defendant are brothers. The defendant is the elder brother. The suit property was originally purchased by the father of the plaintiff and he settled the plaint "A" Schedule property in favour of his wife M.A.Dhanalakshmi, who is the mother of the parties herein, by a registered settlement deed dated 15.11.1969, vide Document No.1731 of 1969. The mother of the parties viz.M.A.Dhanalakshmi died intestate on 04.11.2009,



leaving behind two sons i.e., the parties herein and two daughters namely M.Ranjitham and M.Selvi, as her legal heirs to inherit her estate. It is further stated that both the sisters of the parties released their share by registering lease deed dated 23.12.2009, in favour of the parties herein. Hence, the plaintiff and the defendant are equally entitled to the suit schedule property and seek preliminary decree.

3. The written statement has been filed admitting equal shares of the brothers who are the parties herein in the property. Defendant has also not disputed about the release deed of the sisters' property in favour of the brothers. Hence the parties themselves admitted their shares in the property in the written statement and also confirmed the same.

4. In view of that, no issue is required to be framed in this matter and the judgment and decree can be passed as per the order 12 rule 6 of the CPC since the parties do not dispute regarding the shares in the property and the plaint Document No.9 and 10 is filed. The release deed, dated 11.12.2009 and 23.12.2009, are also filed to show that the sisters have released their share in



favour of the parties herein. The preliminary decree is passed to divide the property in equal shares and the plaintiff and the defendants are entitled to equal shares of the property. The defendant share shall be allotted in the final decree subject to payment of Court fee.

5. Accordingly, the preliminary decree is passed based on the release deed of both the mother and the sisters of the parties herein. There shall be no Order as to costs.

11.10.2023

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N.SATHISH KUMAR, J.
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