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C.S. No.213 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2023

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.S. No.213 of 2022
and O.A.Nos.625 of 2022 & 716 of 2023

P.Jayanthi

... Plaintiff

Vs.

1. M.Jayaraj

2. M.Sarathbabu

3. M.Gunasundari

... Defendants

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

i) to pass a preliminary decree for division of the suit schedule mentioned properties into 4 equal parts and allocate one such share to the plaintiff;

ii) to appoint an Advocate Commissioner to divide the suit properties into four shares and allot 1/4th share in the suit properties to the plaintiff by metes and bound;

iii) to grant permission injunction restraining the defendants, their men, servants, agents or anybody acting under them from alienating or encumbering the plaintiff's 1/4th share in respect of the suit properties;

iv) for determination of future mesne profits from the date of the plaintiff till realization;

v) to award cost of this suit.



For Plaintiff : Mr.P.Rajkumar Pandian
For Defendants : Mr.Athi Veera Rama Pandian

JUDGMENT

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The suit has been filed by the plaintiff seeking partition of $\frac{1}{4}$ th share in the suit schedule properties and also for permanent injunction.

2. The suit 'A' to 'C' properties were the self acquired properties of the father of the plaintiff by name Munusamy by virtue of sale deeds dated 04.02.2002, 11.11.1971, 14.03.1988. The Suit 'D' and 'E' schedule properties are also owned by the plaintiff's father but however the plaintiff is not able to furnish the date of acquisition of the same. The plaintiff and the defendants being the only surviving legal heirs of the deceased Munusamy, are entitled to inherit the same. The plaintiffs and the first and second defendants are the children of Munusamy and the third defendant is the wife of late Munusamy. Since Munusamy died intestate, his legal heirs the plaintiff and the defendants are entitled to $\frac{1}{4}$ th share in the suit schedule property.

3. The first and second defendants filed written statement along with counter claim by stating that they are entitled to $\frac{3}{4}$ th share in 'A', 'B' and 'D' schedule properties and $\frac{2}{4}$ th share in the 'C' and 'E' schedule properties. It is



claimed by the defendants 1 and 2 that the third defendant had settled her 1/4th share in 'A', 'B' and 'D' schedule properties in favour of the defendants 1 and 2 by virtue of a settlement deeds dated 20.10.2022, 26.10.2022 and 26.12.2022 by retaining life interest alone with her. So it is claimed by the defendants 1 and 2 that they are entitled to 3/4th share in 'A', 'B' & 'D' properties and 2/4th share in suit 'C' and 'E' schedule properties and the third defendant is entitled to the life interest in respect of 'A' schedule property alone. The defendants 1 and 2 have also admitted that by being one of the legal heirs of the deceased father, the plaintiff is entitled to 1/4th share in 'A', 'B', 'C', 'D' and 'E' schedule properties.

4. The third defendant had also filed the written statement by admitting the fact that she had executed settlement deeds in favour of defendants 1 and 2 in respect of 1/4th share in 'A', 'B' and 'D' schedule properties. However, she claims 1/4th share in respect of suit 'C' and 'D' schedule properties alone.

5. Since the defendants 1 and 2 have also got 3/4th share in the suit 'A', 'B' and 'D' schedule properties and 2/4th share in suit 'C' and 'E' schedule



properties in view of the settlement deed executed by the third defendant in respect of her 1/4th share in 'A', 'B' and 'D' suit properties, the defendants 1 and 2 also are entitled to get their counter claim allowed.

6. The plaintiff did not file any reply statement to the counter claim raised by the defendants 1 and 2.

7. Since the defendants 1 and 2 have also admitted the claim of the plaintiffs, I feel that the Civil Suit should be decreed in respect of allotting 1/4th share in favour the plaintiff. Even though the third defendant had claimed 1/4th share in the suit property she has not paid any Court fee.

8. Accordingly, the Civil Suit is decreed and preliminary decree is passed in respect of allotting 1/4th share of the suit schedule properties to the plaintiff. The plaintiff is entitled for future mesne profits from the date of plaint till the date of realization. The plaintiff is permitted to initiate separate proceedings along with the final decree petition for quantifying of future mesne profits. Connected applications are closed.

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R.N.MANJULA, J.,

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