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C.S.No.260 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.260 of 2022

&

O.A.No.781 of 2022

Fazeel Azhar Kamaran

.. Plaintiff

Vs.

1.Nayeera Saffah Sayeeda

2.Zaheera Iffath Ateeqa

3.Tayeba Riffath Muneera

4.Rafia Sawath Sabeeha

.. Defendants

PRAYER: Plaintiff filed under Order XXIV Rule 1 and Order IV Rule 1 of the Original Side Rules & Order VII Rule 1 of CPC., praying for the judgment and decree against the defendants as follows:

(i)For a preliminary decree for partition by division of the suit schedule immovable property by metes and bounds and allot 1/3rd share to the plaintiff and put the plaintiff in separate possession of the same;

(ii)Appointing an Advocate Commissioner for division of the suit schedule property and to carry out such division of the suit property;

(iii)If the division is not feasible directing the sale of the suit schedule property and to pay the value of the plaintiff's 1/3rd share out of the sale proceeds after defraying the expenses incurred for the same;



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(iv) For mesne profits of the suit schedule immovable property to be paid by the defendants as per the above share up to the date of delivery of separate possession; and

(v) To pay the cost of the suit.

For Plaintiff : Mr.A.C.Kumaragurubaran

For Defendant : No Appearance
Nos.1 to 3

For Defendant-4 : Mr.S.Sukumar

J U D G M E N T

The plaintiff herein is the brother of the defendants. Both the parents died leaving the plaintiff and the defendants as legal heirs of the subject property. The suit property is allotted to the father of the plaintiff followed by the sale deed dated 05.10.1990 in favour of the mother of the plaintiff and the defendants. Therefore, the plaintiff seeks for partition.

2. Heard the learned counsel for the plaintiff and the learned counsel for the fourth defendant.

3. The written statements were filed by the defendants 1 to 3 together and the fourth defendant. Though they made certain



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allegations in the written statements that the plaintiff is not looking after the family, the plaintiff's share in the suit property is not disputed and according to them, the plaintiff has to calculate his eligible share wherein the fourth defendant is liable to have 16.66% share of the subject property.

4. As the pleadings are not disputed by the defendants and the parties are Muslims, no triable issues arises in the suit. Therefore, this Court based on the admissions of the pleadings and by working on the shares of the parties which belong to their parents and further, the plaintiff had also admitted the nature of the properties in the plaint, as per Muslim laws, the brother is entitled for double the share of the sisters and accordingly, the plaintiff being the brother is entitled for 33.33% of the suit subject property and the remaining shares to the sisters where each of the defendants 1 to 4 is entitled to receive 16.66% share of the suit property. Thus, the suit is liable to be decreed as prayed for at the admission of the pleadings by the plaintiff as per Order 12 Rule 6 of the Civil Procedure Code.



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DP

5. In the result, a preliminary decree is passed in the suit as prayed for with costs. Consequently, connected Application is closed.

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DP

- 1.List of witnesses examined on the side of the plaintiff:- Nil
- 2.List of Exhibits marked on the side of the plaintiff :- Nil
- 3.List of witnesses examined on the side of the defendants :- Nil
- 4.List of Exhibits marked on the side of the defendants:- Nil

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Index:Yes/No
NCC : Yes/No
Order: Speaking/Non Speaking
DP

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