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C.S.No.60 of 2018



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.08.2023

PRONOUNCED ON : 13.10.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

C.S.No.60 of 2018

S.Lingeswari

...

Plaintiff

versus

1.Dr.S.Karthikeyan

2.C.Gayathri Devi

3.S.Kannan

4.S.Sivarama Krishnan

5.S.Kanakadurga

...

Defendants

PRAYER: Civil Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure, praying for a judgment and decree against the defendants :-

(a) to partition the item 1 of schedule A property bearing Old No.13, New No.4, West Club Road, Shenoy N

(b) agar, Chennai – 600 030 into 6 equal shares by metes and bounds and allot one such share to the plaintiff;

(c) to partition the items (2), (3), (4), (5), (6), (7), (8), (9), (10) & (11) of Schedule “A” properties mentioned hereunder into 6 equal



- shares by metes and bounds and allot one such share to the plaintiff;
- (d) to partition all the movables properties more fully described in the Schedule B in Items 1 to V hereunder into 6 equal shares and allot one such share to the plaintiff;
- (e) to direct the defendants 1 to 5 to pay to the plaintiff the costs of the suit.

For Plaintiff	: Mr.P.V.Sathyanarayanan
For Defendant No.1	: Mr.L.Rajasekhar
For Defendant Nos.2, 4 & 5	: Mr.V.Manohar
For Defendant No.3	: No Appearance

JUDGMENT

This Civil Suit has been filed by the plaintiff for partition and to allot 1/6th share in the suit A and B schedule properties.

2. Heard the learned counsels for the plaintiff and the defendants 1, 2, 4 & 5 and perused the materials available on record. Though the third defendant has been served and his name is printed in the cause list, there is no appearance on behalf of him.



3. The case of the plaintiff in brief:-

The plaintiff and the defendants 1 to 5 are the children of Late S.Sadagopan and Late S.Manimuthu. The suit 'A' schedule property was purchased by her mother Manimuthu, by virtue of a sale deed dated 29.05.1985. She constructed a dwelling unit in the said property which comprises of two units in the front portion and 3 units in the rear portion and totally measuring 4800 sq.ft. The defendants 2 to 4 are in occupation of the rear portion and the front portion was let out to third parties for rent.

3.1 Apart from the above property, the mother of the plaintiff also owned movable and immovable assets and that have been given under suit A and B schedule properties. The mother of the plaintiff died on 14.10.2010 leaving behind her husband, the plaintiff and the defendants as her legal representatives. Subsequent to her death, the suit A & B schedule properties were inherited by the plaintiff, defendants and their father Sadagopan and they were in joint enjoyment.

3.2 The father of the plaintiff also died on 09.02.2015. Hence, the plaintiff and the defendants have become joint owners for both A and B schedule properties and they are entitled to 1/6th share each. Since the defendants did not come forward for partition, the plaintiff has sent a legal



notice on 20.04.2013 and called upon them to divide 1/6th share in A & B schedule properties, for which they sent a reply notice dated 03.05.2015 with false and frivolous allegations. At that time, the father of the plaintiff was alive. In the reply notice sent by the defendants, they denied that the daughters did not have any share in the suit properties. The plaintiff and the defendants had filed a joint petition before the Permanent Lok Adalat at Chennai but it was not settled.

3.3 The plaintiff received a notice from the first defendant on 14.05.2014 in which it is stated that the father of the plaintiff, Sadagopan had settled his 1/7th share in favour of the first defendant. The said transaction will not bind the interest of the plaintiff. The suit properties have already been purchased by the mother of the plaintiff Manimuthu as his self acquired properties and hence the settlement deed as alleged by the first defendant can be of no consequence. The movable assets (Sreedhana) mentioned in suit schedule B property belongs to the mother of the plaintiff and in which also the plaintiff has got 1/6th share. Hence, the suit has been filed to allot 1/6 share in the suit A & B schedule properties.

4. Written Statement of the defendants 1 and 4 in brief:-



The fourth defendant admits that the plaintiff and the defendants are entitled to 1/6th share in the suit properties. The first defendant also admits the relationship between the plaintiff and the defendants. It is claimed by the first defendant that 1/7th share has already been settled by his father in favour of him by virtue of a gift deed dated 21.05.2014. He claims that apart from 1/7th share settled in his name, he is also entitled to 1/6th share in the remaining suit property.

5. On the basis of the above pleadings, on 10.07.2019, this Court had framed the following issues:-

- “i. Whether the plaintiff and the 4th defendant are entitled to 1/6th share in the suit property ?*
- ii. Whether the settlement deed projected by the first defendant is true and valid ?*
- iii. Whether the first defendant is entitled to 1/6th of 6/7th share in the property ?*
- iv. To what other reliefs the parties are entitled to?”*

6. However the issues have been suitably re-framed as under:

- (i) Whether the plaintiff is entitled to get 1/6th share in suit 'A' and 'B' schedule properties?



- (ii) Whether the settlement deed is projected by the 1st defendant is true and valid?
- (iii) Whether the plaintiff is entitled to get the relief of preliminary decree as prayed?
- (iv) To what other reliefs?

7. During the course of the trial, on the side of the plaintiff, one witness has been examined as P.W.1 and Ex.P.1 to Ex.P.13 were marked and on the side of the defendants, two witnesses have been examined as D.W.1 and D.W.2 and Ex.D.1 was marked.

8. The learned counsel for the plaintiff submitted that the property belonged to the mother of the parties; the plaintiffs and the defendants are the only surviving legal heirs of their mother and hence they are entitled to 1/6th share in the suit properties.

9. The learned counsel for the first defendant submitted that subsequent to the death of the mother (Manimuthu), the plaintiff and the defendants along with their father namely Sadagopan were entitled to inherit 1/7th share each, Sadagopan had executed a settlement deed in



respect of his 1/7th share in favour of the first defendant and hence he is entitled to the above 1/7th share along with 1/6th share in the remaining 6/7th share in the suit properties.

Discussion:-

10. The parties do not deny the relationship between themselves or the character of the suit property. Hence the matter lies in a very narrow compass. The mother of the parties, who is the owner of the suit property died on 14.10.2010 and subsequently, their father Sadagopan also died on 09.02.2015. If the first defendant did not bring out settlement deed in respect of 1/7th share of the father, it is a straight away case for the parties to claim 1/6th share in the suit property. But it is claimed by the first defendant that his father Sadagopan had executed 1/7th share in his favour and hence he is the absolute owner in respect of his father's share in the suit properties. The owner of the property, who is the mother of the parties died on 14.10.2010, leaving behind her husband and 6 children as her legal heirs.

11. Ex.P.2 Death Certificate of Manimuthu and the legal heirship certificate as Ex.P.3 would show the same. The husband of Manimuthu namely Sadagopan died on 09.02.2015 and Ex.P.4 has been produced to show the same. Before filing the suit, the plaintiff has issued a legal notice



by claiming 1/6th share in the suit properties. Item Nos.1 to 11 in suit 'A' schedule properties are the immovable properties and 'B' schedule properties are the jewels said to be belonging to Late.Manimuthu.

12. The only contesting defendant is the first defendant and the other defendants did not have any serious objections to the claim made by the plaintiff. It is stated that the suit 'B' schedule properties were taken away by the plaintiff along with other sisters. The plaintiff's documents would only show that the sale deeds in respect of the immovable properties are Ex.P.1 and Ex.P.11. However in the reply notice sent by the defendants 1, 3 and 4, it is stated that the movable properties belonged to the mother and she was in enjoyment of the same.

13. However, the defendants had denied the availability of the movable properties with them. Hence, the plaintiff has to prove its availability. There is no evidence available on record to show the existence of movable assets and hence the same can not be considered for partition. So the claim of the plaintiff can be restricted only in respect of 'A' schedule property about which there is no dispute, except an allegation that a settlement deed in favour of the first defendant in respect of 1/7th share belonged to his father.



14. The first defendant was examined himself as D.W.1. During the cross examination of D.W.1, he was confronted with a written family arrangement dated 04.05.2014. He has admitted his participation for the arrangement and signature in the family arrangement is marked as Ex.P13. However, he denied his acceptance for the same. From the said family arrangement, it is seen that the plaintiff and the defendants had agreed to share the suit properties among themselves equally. Even though the first defendant claims $1/7^{\text{th}}$ exclusive share of his father on the basis of the settlement deed dated 21.05.2014, he did not file any counter claim in respect of the same. According to the plaintiff, the settlement deed is not a true one and hence he ignored the same. The plaintiff has proved her initial burden that the suit 'A' schedule property is the self acquired property of the mother and as the legal heirs of their mother, the plaintiff and the defendants are entitled to inherit equal share in the same. At this stage, the burden would shift upon the first defendant to prove that the settlement deed Ex.D.1 is true and valid and in accordance with the said settlement, he is entitled to an exclusive share of $1/7^{\text{th}}$ of his father apart from his $1/6^{\text{th}}$ share in the remaining $6/7^{\text{th}}$ share in the suit 'A' schedule property.



15. The family arrangement in which the first defendant has signed along with the sisters and brothers was dated 04.05.2014. It is needless to state that a family arrangement document is a written form of what has already been agreed about the manner in which the parties thereon should enjoy the family properties. Once such an understanding is reduced into writing and signed by the parties concerned, as per Section 91 of the Evidence Act, the fact should be proved by the very production of the document and nothing else. Once it is so proved by the production of the document, the first defendant is barred under Section 92 of the Evidence Act to give any oral evidence contradicting the same unless, he claims that it is tainted with fraud or any other grounds contemplated under the provisos to Section 92. The first defendant admitted his participation in the mutual family agreement entered into between the plaintiff and the defendants on 04.05.2014 wherein, they had agreed to divide the properties among themselves equally. But it is claimed by the first defendant that it was obtained forcibly. The first defendant being a Doctor, would be knowing well about the content of the document which he signed and hence it is difficult to believe that he was forced by someone for affixing his signature.



16. Having agreed to share the suit properties equally among the sisters and brothers of the first defendant, he claims now that a settlement deed has been executed in his favour by his father in respect of his 1/7 undivided share, just a few months before the death of his father. The date of the settlement deed is 21.05.2014. The settlement deed is in respect of Shenoy Nagar house alone. At the time of execution of the said settlement deed, the father of the first defendant was 87 years old. Hence it is claimed by the plaintiff that the said document itself is a hand work of the first defendant and it has never come into force. Section 122 of the Transfer of Property Act defines a gift as a voluntary transfer of property made without consideration, by one person called donor to another person called the donee, who accepts the gift.

17. One of the essential elements of gift is voluntariness on the part of the donor. The plaintiff has established the fact there was a mutual agreement between the family members to enjoy the properties by the family members equally. It is one important circumstance established by the plaintiff to throw doubt upon the voluntariness on the part of the father to execute the settlement deed. When the plaintiff has established the doubtful circumstance surrounding the settlement deed, it is the burden of the first



defendant to prove the fact that the father was in a sound and disposing state of mind at the time when the settlement deed was executed.

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18. D.W.1 has stated that at the time of executing the settlement deed, his father and his advocate alone were present and none of his siblings knew the same. He has not executed any attesting witness to prove that the father had voluntarily executed the settlement deed in his favour. No evidence like mutation of records is also available on record to show that the settlement deed had come into force any time during the life time of his father or after his death. The first defendant is not able to prove that the settlement deed was executed by his father when he was fully conscious of the events running around him. Neither had he proved that the settlement has come in to force. Hence, I feel that the first defendant cannot claim any right of any excess share in the suit property on the basis of Ex.D.1.

19. The second defendant who was examined as D.W.2 has stated in her evidence that all the parties had agreed to a mutual agreement entered into between themselves for sharing the suit properties among themselves



equally. She has further stated that she came to know about Ex.D.1 settlement deed only after it was filed in the Court

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20. No doubt, after the demise of the mother, the father also became a first class legal heir along with his sons and daughters. Hence the father would have inherited an equal share along with sons and daughters in his wife's properties. But the first defendant has stated that the property involved in the settlement deed belongs to his father and it was purchased by him. But no document has been produced to substantiate the same. Further all the siblings had entered into a mutual agreement that they have accepted to divide the properties among themselves equally. Thus, the plaintiff has proved that herself and other defendants are entitled to 1/6th share in the suit properties and the settlement deed projected by the first defendant is not proved to be valid and acted upon, even if it happens to be a true one. Thus, **Issue No 2 is answered.**

21. Since the first defendant has not proved the validity and enforceability of Ex.D.1 settlement deed, the plaintiff and the defendants are entitled to 1/6th share in the entire suit 'A' schedule properties and hence the



plaintiff is entitled to get a preliminary decree for partition in respect of 1/6th share in suit 'A' schedule properties. Thus, **Issue Nos.2 & 3 are answered.**

WEB COPY 22. Even though the plaintiff has claimed a share in respect of movable assets also, the availability of the immovables are not been substantiated by producing any evidence. No doubt as the legal heir of the her parents, the plaintiff and the defendants are entitled to equal share of the movable assets also. But in the absence of any evidence to show its availability no relief can be granted by presuming the availability of the movable assets. Hence, I feel the plaintiff is not entitled to any relief other than the reliefs. Thus, **Issue No.4 is answered.**

In the result, this Suit is **partly decreed** in respect of 1/6th share in suit 'A' schedule property alone and a preliminary decree for partition is passed in respect of the same in favour of the plaintiff. No costs.

13.10.2023

Speaking order / Non Speaking order

Index : Yes / No

Neutral Citation : Yes / No

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Witnesses examined on the side of plaintiff:-

P.W.1	S.Lingeswari
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List of documents marked on the side of plaintiff:-

Ex.P1	The photocopy of Sale Deed executed by V.Santhanam in favour of Manimuthu dated 29.05.1985
Ex.P2	The photocopy of Death Certificate of Late K.Manimuthu dated 14.10.2010
Ex.P3	The photocopy of Legal Heirship Certificate of Late K.Manimuthu dated 25.02.2011
Ex.P4	The photocopy of Death Certificate of S.Sadagopan dated 09.02.2015
Ex.P5	The photocopy of Notice issued by counsel for plaintiff to Sadagopan and defendants 1 to 5 dated 20.04.2013
Ex.P6	The photocopy of Reply Notice issued by counsel for Sadagopan, D1, D3 & D4 to counsel for plaintiff dated 03.05.2013
Ex.P7	The photocopy of Rejoinder Notice issued by counsel for plaintiff to counsel for Sadagopan, D1, D3 & D4 dated 09.05.2013
Ex.P8	The photocopy of Reply Notice issued by counsel for Sadagopan, D1, D3 & D4 to counsel for plaintiff dated 06.06.2013
Ex.P9	The photocopy of Notice issued by counsel for D1 to plaintiff, D2, D3, D4 and D5 dated 14.05.2014
Ex.P10	The true copy of petition filed by plaintiff, D2 and D5 before Lok Adalat of Legal Services Authority dated 22.06.2014
Ex.P11	Original sale deed of Shenoy Nagar property on 05.05.2014 by D1 to the plaintiff and other defendants



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Ex.P12	Mutual Agreement entered into between the plaintiff and the defendants dated 04.05.2014
Ex.P13	List of properties agreed upon by plaintiff and defendants dated 27.04.2014



Witnesses examined on the side of defendants:-

D.W.1	Dr.S.Karthikeyan
D.W.2	C.Gayathri Devi

List of documents marked on the side of defendants:-

Ex.D1	The photocopy of the Settlement Deed executed by the Late Sadagopan in favour of the first defendant dated 21.05.2014.
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13.10.2023

Copy to :

- 1.The Sub Assistant Registrar,
Original Side, High Court of Madras.
- 2.The Record Keeper,
Original Side Records Section,
High Court of Madras.



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R.N.MANJULA, J.

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Pre-Delivery Judgment made in
C.S.No.60 of 2018

13.10.2023