



C.S.No.66 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.66 of 2018

1.T.K.Kasthuri

2.T.K.Sundar Raj Perumal

3.T.K.Durgaprasad

.. Plaintiffs

Vs.

1.T.V.Manoharan

2.T.V.Balasubramaniam

3.U.Rajathi

4.T.S.Rajendiran

5.T.S.Manjula

6.R.D.Krishna Kumari

7.D.Balaji

8.D.Ravi

9.D.Kavitha

10.D.Sangeetha

11.D.Gowrishankar

.. Defendants



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PRAYER: Plaint filed under Order IV Rule 1 of the Original Side Rules r/w. Order VII Rule 1 of CPC., praying for the judgment and decree against the defendants as follows:

(i) Directing partition of the property described in the Schedule hereunder by metes and bounds and allot 1/4th share to the plaintiffs together with mense profits from the date of delivery of possession of the plaintiffs share; and

(ii) Directing the defendants to pay the cost of the suit to the plaintiffs.

For Plaintiffs : Mr.T.S.Bhaskaran

For Defendant : Set Ex-parte
Nos.1 to 11

J U D G M E N T

This suit has been filed by the plaintiffs for partition of the property described in the Schedule by metes and bounds and allot 1/4th share to the plaintiffs together with mense profits from the date of delivery of possession of the plaintiffs' share.

2. Heard Mr.T.S.Bhaskaran, learned counsel for the plaintiffs.

3. The brief facts of the case is as follows:

a) Originally, the suit properties belonged to one Rajarathina



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Mudaliar, who had four daughters. The first plaintiff is the third daughter and the plaintiffs 2 and 3 herein are her children. The deceased T.V.Kannabai is the first daughter of Late Rajarathina Mudaliar and the defendants 1 to 3 are the legal heirs of the said T.V.Kannabai; the defendants 4 and 5 are the legal heirs of the deceased daughter T.V.Dolli Bai. Late Rajarathina Mudaliar's another daughter R.D.Krishna Kumari is the sixth defendant herein and the defendants 7 to 11 are the children of the said sixth defendant.

b) It is the case of the plaintiffs that though Rajarathina Mudaliar bequeathed the various properties to all his daughters under a Will dated 16.06.1951, which also probated before this Court in O.P.No.40 of 1962, it is their contention that the subject suit properties are kept in common as on date. They stated that the same was not allotted to any of the daughters. According to the plaintiffs, the subject suit properties are still available for partition so far, as they have not been divided by metes and bounds. Hence, the present suit.

4. Despite several opportunities, the defendants have not



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filed their written statements. Hence, the defendants are set *ex-parte*.

5. The third plaintiff examined himself as P.W.1 and Exs.P1 to P7 were marked on their side. P.W.1 has spoken about the nature of the properties kept in common and available for partition. Ex.P1 is the copy of the probated Will of Late Rajarathina Mudaliar; Exs.P2 and P3 are filed to prove the demise and legal heirship of E.Rajarathina Mudaliar respectively and Exs.P4 & P7 are the legal notices issued by the plaintiffs to the defendants 6 to 11 along with postal acknowledgments. Ex.P5 is the reply notice issued by the defendants 6 to 11 and Ex.P6 is the copy of the rejoinder which has been issued by the plaintiffs to the defendants 6 to 11.

6. Though the stand taken by the defendants 6 to 11 is that the suit properties have been settled in favour of the daughters of Late E.Rajarathina Mudaliar, the plaintiffs have insisted to produce those documents by way of rejoinder. However, no reply whatsoever was given. Even for suit summons, they have not appeared before this Court to substantiate their stand taken in the reply statement. In the absence of any evidence on their side, to



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substantiate their stand taken in the reply notice, this Court is left with no other option except to go with the evidence tendered on the side of the plaintiffs.

7. Considering the evidence of P.W.1 and the documents filed, particularly, Ex.P1 which makes it clear that the suit properties originally belongs to the family which has not been allotted to any of the daughters of Late E.Rajarithina Mudailar and the same is available for partition. Accordingly, a preliminary decree is granted and the suit property mentioned in the schedule is divided into four equal shares and in that, the plaintiffs shall be entitled for their 1/4th share together with mesne profits from the date of suit till the date of delivery. The suit is decreed as prayed for. There shall be no order as to costs.

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- 1.List of witnesses examined on the side of the plaintiffs:- P.W.1/T.K.Durga Prasad
- 2.List of Exhibits marked on the side of the plaintiffs :- Exs.P1 to P7



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a)Ex.P1-Certified copy of the probated Will of Late Rajarathinam Mudaliyar dated 17.05.1951.

b)Ex.P2-Computer generated death certificate of E.Rajarathinam Mudaliyar.

c)Ex.P3-Photocopy of the legal heir certificate of E.Rajarathinam.

d)Ex.P4-Office copy of the legal notice dated 23.04.2016 issued by the plaintiffs to the defendants 6 to 11 along with 6 postal acknowledgment cards.

e)Ex.P5-Original reply notice dated 06.05.2016 sent by the defendants 6 to 11.

f)Ex.P6-Office copy of the rejoinder dated 27.05.2016 sent by the plaintiffs to the defendants 6 to 11.

g)Ex.P7-Office copy of the legal notice dated 19.07.2016 issued by the plaintiffs to the defendants along with 10 postal acknowledgment cards.

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



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NCC : Yes/No

Order: Speaking/Non Speaking

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N.SATHISH KUMAR, J.

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