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C.S.No.199 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.12.2023

CORAM

THE HON'BLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.199 of 2022

1. Ashok Kumar K.Jogani [deceased]
 2. Kailash Ashok Jogani
 3. Vikram Ashok Jogani
 4. Aditya Ashok Jogani
 5. Hayagriv Ashok Jogani
- [Plaintiffs 2 to 5 are impleaded as per the
Orders of this Court dated 24.11.2023 in
A.No.6185, 6188 and 6190 of 2023]

... Plaintiffs

Vs

1. Dr.Piyush Kumar K.Jogani
2. Bharat Kumar K. Jogani
3. Deepak Kumar K.Jogani
4. Neera M. Mehta

... Defendants

Civil Suit filed under Order VII Rule 1 of Civil Procedure Code read with Order IV Rule 1 of the High Court O.S. Rules 1956 read with for the following decree and judgment :

a] to pass a decree that the plaintiff is entitled to 1/10th share in the suit property by metes and bounds and according to good and bad soil and



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convenience of enjoying and putting the plaintiff in separate possession of his 1/10th share;

b] directing the defendants to pay to the plaintiffs the costs of the suit;

For Plaintiffs : Mr.P.Solomon Francis

For defendants : Mr.S.Ramesh Kumar – D1 & D3

JUDGMENT

This suit has been filed for partition of the suit property into ten equal shares and allot one such share to the Plaintiff and for costs.

2. The plaintiff and the defendants are brothers and sisters. The suit property has been purchased by the father of the plaintiff and the defendants in the name of their mother and the first defendant on 26.02.1979. After the death of their mother, the property devolved on the plaintiff and the defendants. The defendants 2 to 4 settled their respective shares in favour of the first defendant and therefore, the plaintiffs is entitled



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to 1/10th share and the first defendant is entitled to 9/10 share in the suit property.

3. Written statement has been filed first defendant admitting that the plaintiff is entitled to 1/10th share in the suit property.

4. On a perusal of the entire pleadings of both sides, this Court is of the view that there is no triable issues involved in this suit. In such view of the matter, on the basis of the admission made in the pleadings and as the relationship is also not disputed and the share of the parties is also not disputed, invoking the provisions of Order 12 Rule 6 a preliminary decree itself can be passed in the suit. During the pendency of the suit, the plaintiff died and his legal heirs, viz., plaintiffs 2 to 5 have been brought on record.

5. Since both the plaintiffs and the defendants are agreeable for partition and the defendants also not disputed 1/10th share of the plaintiff



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and the remaining 9/10 share goes to the defendants as the defendants 2 to 4 have released their share to the first defendant, the remaining 9/10th share will automatically go to the first defendant.

6. Considering the very admission made by the parties and as there is no triable issue and the defendants have also submitted that they have no objection in passing a preliminary decree for division of the property into 10 equal shares and allot one such share to the plaintiffs and allot 9/10th share to the first defendant, invoking Order XII Rule 6 of CPC, I am inclined to dispose of the suit by passing a preliminary decree.

7. Accordingly, preliminary decree is passed for dividing the suit property by metes and bounds into ten equal shares and allotting one such share to of the plaintiffs. The first defendant is entitled to 9/10th share and on payment of Court Fee. Considering the relationship between the parties, there shall be no Order as to costs.



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8. With the consent of both the parties, Mr.Vijayan Subramanian, Advocate, Absolute Legal-Law Firm, No.17, Lakshmi Street, New Avadi Road, Kilpauk, Chennai – 600 010, Mobile 98413 20723 is appointed as an Advocate Commissioner to suggest mode of division of the suit property for allotting 1/10th share to the plaintiffs. The Advocate Commissioner is entitled to avail service of an Engineer and surveyor. The remuneration of the Advocate Commissioner is fixed at R.40,000/-. The remuneration of the Advocate Commissioner and the expenses of the Engineer and Surveyor shall be borne by both the parties in the ratio of 70 : 30% .

9. Post on 22.01.2024 for filing of the report of the Advocate Commissioner.

19.12.2023

vrc

Index : Yes/No

Internet : Yes/No

Speaking/Non-Speaking Order



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N.SATHISH KUMAR, J.

VTC

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