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C.S.No.673 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.S.No.673 of 2019

and

C.S.No.5 of 2023

& O.A.No.11 of 2023

In C.S.No.673 of 2019:

T.K.Durga Prasad

.. Plaintiff

Vs.

1.T.K.Sundara Raj Perumal

2.T.K.Kasturi Bai

.. Defendants

PRAYER: Plaintiff filed under Order I 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 partition and division of the suit properties into ½ equal shares by metes and bounds and to allot his share;

(ii)Directing the defendants to put the plaintiff in separate possession of his shares so allotted;

(iii)Directing the defendants to pay the costs of the suit.

For Plaintiff : Mr.S.Rajesh

For Defendants : Mr.R.Manickavel



C.S.No.673 of 2019

In C.S.No.5 of 2023:

T.K.Sundar Raja Perumal

.. Plaintiff

Vs.

T.K.Durga Prasad

.. Defendant

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

(i)For granting a decree for partition and division of the schedule mentioned properties into two equal shares and allot a separate half share to him;

(ii)Directing the defendant to render true and correct account for the rental income collected from the schedule mentioned properties for the period from January 2008 to September 2017; and

(iii)To award the costs of the suit.

For Plaintiff : Mr.R.Manickavel

For Defendant : Mr.S.Rajesh

COMMON JUDGMENT

These suits have been filed by the parties for partition in respect of the same property.

2. Heard the learned counsel for the parties.



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3. The Suit in C.S.No.673 of 2019 has been filed by the plaintiff namely, T.K.Durgaprasad, as against his elder brother and mother in respect of the suit claim of half share in the suit property, whereas the suit in C.S.No.5 of 2023 has been filed against the plaintiff in C.S.No.673 of 2019 by his elder brother T.K.Sundar Raja Perumal, claiming half share in the suit property and also for rendition of accounts.

4. Since both the parties have not disputed their respective shares in the suit schedule properties, the suits can be disposed at the admission of the pleadings made by the parties as per Order XII Rule 6 of the Civil Procedure Code.

5. Considering the fact that the suit property originally belongs to the parents of the parties and in fact, life interest is also given to the mother and the mother has also executed the release deed in favour of her two sons in respect of her share, there are no triable issues in the suits. As the shares were admitted by the parties, a preliminary decree in C.S.673 of 2019 is passed for dividing $1/2^{\text{th}}$ share equally to the plaintiff and the first defendant



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herein. Since already Court fee has been paid in C.S.No.5 of 2023, the first defendant namely, T.K.Sundar Raja Perumal is also entitled to the share of the suit property. It is also made clear that the mother is entitled to continue to stay in the suit property till her life time. She is also entitled to receive the benefits of rents as she is receiving as on date from the suit properties. With regard to mesne profits, the same will be decided in the final decree proceedings.

7. Accordingly, the suit in C.S.No.673 of 2019 is decreed as prayed for, dividing the suit properties into two equal shares and granting the same to the plaintiff and the first defendant. In view of the decree passed in the suit in C.S.No.673 of 2019, the suit in C.S.No.5 of 2023 is dismissed for dividing and effecting the final decree proceedings. Consequently, the connected Original Application is closed. There shall be no order as to costs.

8. With the consent of both sides, this Court appoints Ms.M.Stella, learned counsel as an Advocate Commissioner, Ms.No.2224/2015, who is residing at 273, Kamaraj Street, Kakkanji Colony, B1 Block, Vyasarpadi, Chennai-600039, Mobile No.9500710059, to divide the suit property by taking aid of the



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Surveyor and to file a report by placing her suggestions for division of the suit property. A sum of Rs.50,000/- is fixed as remuneration to the learned Advocate Commissioner and the same shall be paid directly to her by both the plaintiff and the first defendant in equal proportion. The learned Advocate Commissioner shall file her report before this Court within a month.

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DP

In C.S.No.673 of 2019

- 1.List of witnesses examined on the side of the plaintiff:- P.W.1 (T.K.Durga Prasad)
- 2.List of Exhibits marked on the side of the plaintiff :- Exs.P1 to P7
 - a)Ex.P1-Online copy of death certificate of T.V.Kannan dated 21.10.2019.
 - b)Ex.P2-Original release deed dated 05.02.2013.
 - c)Ex.P3-Certified copy of last Will and testament document number 53/2006 dated 30.06.2006.
 - d)Ex.P4-Order copy of probate of Will dated 30.06.2006.
 - e)Ex.P5-Certified copy of family settlement deed dated 31.12.1977.



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f)Ex.P6-Certified copy of family settlement deed dated 30.06.1978

g)Ex.P7-Original legal heir certificate of T.V.Kannan dated 19.03.2008.

3.List of witnesses examined on the side of the defendants :- Nil

4.List of Exhibits marked on the side of the defendants:- Nil

In C.S.No.5 of 2023

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 defendant :- Nil

4.List of Exhibits marked on the side of the defendant:- Nil

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Index:Yes/No

NCC : Yes/No

Order: Speaking/Non Speaking

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C.S.No.673 of 2019

N.SATHISH KUMAR, J.

DP

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