



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2023

CORAM:

THE HONOURABLE Ms. JUSTICE R.N.MANJULA

C.S. No.338 of 2021
and A.No.1108 of 2022

P.Vinod Kannan

... Plaintiff

Vs.

P.Vishu Raghav

... Defendant

Civil Suit is filed under Order IV Rule 1 of Original Side Rules r/w. VII Rule 1 of CPC to pass a judgment and decree in his favour and against the defendant:

i) to pass a preliminary decree for partition in favour of the plaintiff for his half share in the suit schedule mentioned properties by separate possession;

ii) to direct the defendant to pay a sum of Rs.10,41,300/- towards past monthly rent from September 2018 to September 2021 with interest @ 18% p.a. till realization in full;

iii) to direct the defendant to pay a sum of Rs.33,750/- (presently the total month rental income is Rs.67,500) per month towards monthly rent from the date of this plaint to till the date of delivery possession;

iv) to pass a final decree by appointing an Advocate Commissioner to



effect a convenient division of the suit schedule mentioned properties and allot $\frac{1}{2}$ (half) share by metes and bounds in favour of the plaintiff.

WEB COPY v) to order defendant to pay the cost of the suit.

For Plaintiff : Ms.T.S.Selvarani
For Defendant : Ex-parte

JUDGMENT

This Civil Suit has been filed to pass a preliminary decree for partition in favour of the plaintiff for his half share in the suit schedule mentioned properties by separate possession, to direct the defendant to pay a sum of Rs.10,41,300/- towards past monthly rent from September 2018 to September 2021 with interest @ 18% p.a. till realization in full, to direct the defendant to pay a sum of Rs.33,750/- (presently the total month rental income is Rs.67,500) per month towards monthly rent from the date of this plaint to till the date of delivery possession and to pass a final decree by appointing an Advocate Commissioner to effect a convenient division of the suit schedule mentioned properties and allot $\frac{1}{2}$ (half) share by metes and bounds in favour of the plaintiff.

2. Originally the suit schedule property belonged to one



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A.D.Seetharam who is the grandfather of the plaintiff and defendant by virtue of a sale deed dated 25.12.1953. The said A.D.Seetharam died on 19.11.1973 leaving behind his wife Kamalambal and his son A.S.Padmanabhan as his legal heirs. The wife of A.D.Seetharam also died on 19.05.1987 and his son A.S.Padmanabhan also died on 26.01.2019. The wife and three children of A.S.Padmanabhan stood as his legal heirs at the time of his death. The wife of A.S.Padmanabhan by name P.Kumuthalakshmi also died on 18.09.2006 and one of the sons by name P.Vivekanand died on 03.12.2003. Now the plaintiff and the defendant alone are the surviving legal heirs of the A.S.Padmanabhan. So far as the plaintiff and defendants are concerned the property is their ancestral property and in which both the plaintiff and the defendant have got equal share. Since the defendant is not amenable for partition, the plaintiff had filed this suit for partition.

3. The defendant remained *ex parte*. The plaintiff have filed this suit claiming half share of the suit property along with past and future mesne profits.

4. Heard Mr.R.Venkatesh, the learned counsel counsel for the plaintiff.



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5. The issues that arise for consideration in this suit are as follows:

- i) *Whether the plaintiff is entitled to half share in the suit property?*
- ii) *Whether the plaintiff is entitled to preliminary decree for partition in respect of $\frac{1}{2}$ share in the suit property ?*
- iii) *Whether the plaintiff is entitled to past and future mesne profits as claimed?*

6. During the course of recording of evidence, the plaintiff examined himself as P.W.1 and Exs.P1 to P18 were marked.

7. The certified copy of the sale deed dated 25.12.1953 which is marked as Ex.P1 would show that the suit properties were purchased by A.D.Seetharam who is the grandfather of both the plaintiff and the defendants. The death certificate of A.D.Seetharam is marked as Ex.P2 and the death certificate of his wife Kamalambal is marked as Ex.P3. After the demise of A.D.Seetharam, his only son A.S.Padmanabhan had chosen to sell whole of the suit property and now the remaining extent is shown in Item No.1. Ex.P4 is the sale deed of Item No.2 of the suit property purchased by the wife of A.S.Padmanabhan by virtue of a sale deed dated 25.01.1993



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which is marked as Ex.P4. The death certificate of P.Kumuthalakshmi and one of the sons by name P.Vivekanand has also been produced as Ex.P6 and P7. Ex.P8 is the death certificate of A.S.Padmanabhan. The legal heirship certificate of A.S.Padmanabhan which is marked as Ex.P9 would show that the plaintiff and the defendants are his only legal heirs. Since the plaintiff and the defendant are the only legal heirs of both their parents, A.S.Padmanabhan and P.Kumuthalakshmi, they are entitled to half share in the same. Since the defendant did not come forward to partition, the plaintiff had sent a legal notice on 02.03.2021 which is marked as Ex.P13. The reply notice sent by the defendant is marked as Ex.P14 for which the plaintiff had also sent a re-joinder and the same is marked as Ex.P15.

8. It is submitted by the learned counsel for the plaintiff that the defendant is getting all the rents from the suit property without paying the respective share of the plaintiff; since the plaintiff and the defendant are entitled to half share in the suit property, they are also entitled to half share in the past and future mesne profits of the suit property as well.

9. Since the plaintiff had proved through oral and documentary



evidence that he is one of the legal heir of A.S.Padmanabhan and P.Kumuthalakshmi, along with the defendant, the plaintiff is also entitled to half share in the suit property. **Thus Issues 1 and 2 are answered.**

10. With the above evidence, the plaintiff had proved his claim and hence he is entitled to get preliminary decree of partition in respect of his half share in the suit property.

11. In the result the Civil Suit is decreed and preliminary decree in respect of the half share of the plaintiff in the suit schedule property and in respect of the half share of the plaintiff in the past and future mesne profits is passed. However the quantum of past and future mesne profits will be fixed in a separate proceeding. Consequently, connected application is closed.

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**APPENDIX****Witnesses examined:**

P.Vinod Kannan – P.W.1

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List of documents:

<i>Exhibits</i>	<i>Documents</i>
P1	Certified copy of the sale deed dated 25.12.1953
P2	Death certificate of A.D.Seetharam
P3	Death certificate of A.S.Kamalambal
P4	Sale deed dated 25.01.1993
P5	Original joint development agreement dated 30.08.2001
P6	Death certificate of Vivekanand
P7	Death certificate of P.Kumudhalakshmi
P8	Death certificate of A.S.Padhmanaban
P9	Legal heirship certificate dated 15.05.2019
P10	CSR of the complaint given by the plaintiff against the defendant dated 11.11.2020
P11	Order in CrI.O.P.No.18165 of 2020
P12	CSR regarding plaintiff against tenants dated 23.02.2021.
P13	Legal notice sent to the defendant dated 02.03.2010
P14	Reply notice sent by the defendant's advocate dated 16.03.2021
P15	Rejoinder with original acknowledgment card given by the plaintiff dated 18.04.2021
P16	Monthly rent amount sent by Whatsapp to plaintiff by the defendant on various months
P17	Statement regarding rent amount so far paid by the defendant and the balance amount has to be paid
P18	Aadhaar card

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