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C.S. No.909 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2023

CORAM

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.909 of 2017

C. Kasthuri Rangan

...Plaintiff

.Vs.

C. Venkatesan

... Defendant

Plaint filed under Order IV Rule 1 of O.S. Rules read with Order VII Rule 1 and 2 of the Code of Civil Procedure, praying for:

a) For effecting division of the suit property, more fully, described in schedule to the plaint, into two equal share by metes and bounds and allocate half share to the plaintiff;

b)For Appointment of an Advocate Commissioner to divide the property, more fully described in the schedule to the plaint, into two equal shares by metes and bounds and allocate half share to the plaintiff;

c) For the determination of mesne profit of the plaint schedule property under Order XX, Rule 12 of CPC from the date of execution of



the release deed dated 03.05.2005, till the date of actual division of the property by metes and bounds in accordance with law;

d) For a permanent injunction restraining the defendant, or his agents, servants, men, or anyone claiming under or through him and/or authorized by him from in any manner encumbering, alienating, or dealing with the property, more fully described in the Schedule to the plaint, either by way of sale, mortgage, Joint Venture or in any other manner, and /or altering the physical features of the suit property.

e) For a permanent injunction restraining the Defendant, or his agents, servants, men, or anyone claiming under or through him and or/authorized by him from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the Ground Floor of the property, more fully described in the Schedule to the plaint;

f) For such other relief or reliefs; and g) For costs of the suit.

For Plaintiff : Mr.R. Thiagarajan

For Defendant : Mr.A. Balasingh Ramanujam

**JUDGMENT**

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The plaintiff has come up with the above suit seeking for the relief as stated therein.

2. The brief facts of the plaint are as follows:

(i) The Plaintiff and the Defendant are brothers. The Suit property is the ancestral property. By virtue of Deed of Release dated 03.05.2005, registered as Document No.2362 of 2005, in favour of the plaintiff and the defendant, they have been owning and possessing the suit schedule property jointly as absolute owners thereof.

(ii) By mutual agreement, the plaintiff had occupied the Ground Floor and the Defendant occupied the 1st Floor of the suit schedule property and other two portions in the Ground Floor were let out to tenants. The rent received from the Tenants is agreed to be shared equally between the plaintiff and the defendant. As if there is a share in the rent received from the Tenants and the plaintiff is living in USA due to employment purpose, the Defendant was instructed to pay Statutory dues to the Government Authority on behalf of the plaintiff with regard to the ground floor possessed by him and to meet other incidental



expenses incurred related to the suit property by way of rental income on his share. Even on instruction of the plaintiff, the Defendant did not pay any statutory dues pertaining to the ground floor in the suit property occupied by the plaintiff, but has been enjoying the property and has been collecting the rents from the Tenants not sharing to the plaintiff herein. Hence, the plaintiff was constrained to pay the entire arrears of property tax and other statutory dues when he was in India in the year 2015 and cleared the entire arrears of the Statutory dues related to the ground floor of the suit property.

(iii) Taking advantage of the absence of the plaintiff and the unprecedented Cyclone Vardah in the year 2016, the defendant, without the consent of the plaintiff, demolished the front portion of the building which was in occupation of the plaintiff and thereafter erected illegal and unauthorized construction without obtaining proper permission from the Government Authorities. In this regard, O.S No.485 of 2017 on the file of the City Civil Court, Chennai has been filed against the defendant. Under such circumstances, while the the plaintiff visited Chennai for attending the Annual Ceremony Function of his Father, the ground floor



premises possessed and enjoyed by the plaintiff was kept under lock and key preventing him from entering the premises. Hence, the plaintiff sought assistance of Police by giving private complaint as against the defendant. Upon intervention of Police, the plaintiff was permitted to occupy the Ground Floor of the suit Schedule property.

(iv) Thus, as there is no possible and feasible to the plaintiff and the defendant to maintain joint ownership of the suit property on account of the divergent views of both parties and there is threat of wrongful interference and invasion in the ground floor of the suit property and in the proprietary rights of the plaintiff, by the defendant herein, the Plaintiff has filed this civil suit for the reliefs as stated above.

3. In the Written Statement filed by the defendant, it has been stated that the Plaintiff and the Defendant are brothers and both are absolute owner of the suit property having 50% undivided share over the suit property. They are in joint and constructive possession ever since from the date of such purchases as early as in the year 2005 and the Defendant is permitted to occupy the First Floor whereas the plaintiff is



permitted to occupy in the Ground Floor of the suit property. Due to Varadha Cyclone, the front portion of the Wall which was under dilapidated condition fell down on its own without any causalities. In order to protect himself and to safeguard the possession and life of the defendant's family, the defendant repaired the Wall on his own cost. The defendant has paid all statutory dues to the Government Authority related to both Ground and First Floor of the suit property and the same is accounted for and the due share of rental income are regularly deposited to the Credit of the plaintiff's Bank Account. The defendant has had proper records to substantiate the same. Since the tenants have vacated the suit property after adjusting the rental advance towards the rent payable by them. The same has been brought to the knowledge of the plaintiff. While being so, the question of mesne profit does not arise at all by way of collecting the rents. Thus, the defendant has made contention against the plaint averments.

4. On the pleading of the parties, the following issues were framed:



"1) Whether the plaintiff, who is presently occupying the ground floor, occupying and the defendant, who is presently, the first floor of the suit property, are entitled to interfere with each other's possession of their respective portions?

2) Whether the defendant is entitled to make any alteration in the portion of suit property under his occupation?

3) Whether the plaintiff is entitled for a preliminary Decree declaring his half share by partition by metes and bounds?

4) Whether the plaintiff is entitled to mesne profits and, if so, to what extent?

5) Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant or his agents, servants, men or anyone claiming under or through him and/or authorised by him from, in any manner encumbering, alienating or dealing with the property, more fully described in the schedule to the plaint either by way of sale, mortgage, joint venture or in any other manner and/or altering the physical features of the suit property?

6) Whether the plaintiff is entitled to a decree of permanent injunction restraining the defendant, or his agents, servants,



men or anyone claiming under or through him and/or authorised by him from in any manner interfering with the plaintiff's peaceful possession and enjoyment of the ground floor of the suit property?

7) Whether the plaintiff is entitled to costs?

8) Whether the parties are entitled to any other relief?"

5. On the side of the plaintiff, the Plaintiff was examined as PW.1 and marked the Exs.P1 to Exs.P6 as documentary evidence in order to prove the suit claim. On the side of the defendant, the Defendant was examined as D.W.1 and no documents have been filed.

6. The learned counsel for the plaintiff would submit that the suit property is the ancestral property. The plaintiff and the defendant have occupied the suit property in the Ground Floor and the First Floor respectively under the joint and constructive possession from the year 2005 by way of Deed of Release executed by other legal heirs. Since the plaintiff is residing in USA due to employment, the defendant has not maintained the suit property in a proper manner and has not paid



statutory dues to the Government Authorities. Further, without obtaining permission from the plaintiff, the defendant has erected construction in the premises of the plaintiff without proper approval from the Government Authorities and restrained the plaintiff from entering his own premises by the defendant. Hence, the plaintiff has filed the present suit seeking for the aforesaid prayer.

7. The learned counsel for the defendant would submit that the plaintiff and defendant are brothers and both are the absolute owner of the suit schedule property having 50% undivided share over the suit property.

8. Heard both sides and perused the material available on record.

9. It is admitted fact that there is no dispute in the title, right and interest in the suit property between the plaintiff and the defendant. The plaintiff and the defendant are the absolute owners of the suit property and they are entitled for 50% share each in the suit schedule property.



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10. It can be seen on perusal of the Paragraph No.2 in the Written Statement filed by the Defendant, it reads as follows:

"2. The averment contained in Para No.3,4,5 and 6 of the plaint is true and the same is also duly admitted by this defendant as well. The plaintiff and the defendant brothers and both are the absolute owner of the suit property having 50% undivided share over the property are in joint and constructive possession ever since from the date of such purchases are early in the year 2005 and this defendant is permitted to occupy in the First Floor whereas the plaintiff was permitted to occupy in the ground floor of the suit property."

11. Further, on perusal of cross of D.W1 in the Question No.5. it is seen as follows:

"You cannot have any objection to pass a preliminary decree in this suit?"

the defendant has replied that *"Yes. I have no objection."*



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12. Having considered the facts and circumstances of the case and the averment made in the Written Statement and deposition of Defendant in Cross, it is crystal clear that the plaintiff and the defendant are having share of 50:50 in the suit property. There is no objection on the side of the defendant to pass preliminary decree in the suit since the plaintiff is having 50% undivided share over the suit property to the plaintiff. Therefore, the Plaintiff herein is entitled to preliminary decree for partition of 1/2 share in the suit schedule property as prayed for.

13. In the result, a preliminary decree is passed. No costs.

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List of Witnesses Examined on the side of the Plaintiff:-



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1. 1. P.W.1 – Mr. C. Kasthuri Rangan

List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the certified copy of the release deed dated 03.05.2005.
2. Ex.P2 is true copy of the plaint in O.S. No.485 of 2017 on the file of the V Assistant Judge, City Civil Court, Chennai.
3. Ex.P3 is the original notice issued by the Greater Chennai Corporation, Chennai dated 13.02.2017.
4. Ex.P4. is copy of the complaint dated 04.02.2017
5. Ex.P5 is the series of printout of photographs filed along with Sec. 65B of Indian Evidence Act (6pages).
(Ex.P1 to Ex.P5 were marked through P.W.1 Chief)
6. Ex.P6 is a Copy of the letter dated 01.06.2020.
(Ex.P6 is marked through D.W.1 Cross)

List of Witnesses Examined on the side of the Defendant:-

1. D.W.1 – Mr. C. Venkatesh

No Exhibits have been marked on the side of the defendant.

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Index : No

Internet : Yes

Speaking order/ Non-speaking order

A.A.NAKKIRAN.,J



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