



*C.S.No.294 of 2014*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.07.2023

**CORAM**

**THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN**

**C.S.No.294 of 2014**

K. Ravi Kumar

...Plaintiff

.Vs.

1.K.Santhamurthy  
2.Muthumanickam  
3.Thenmozhi  
4.K. Baskar

... Defendants

Plaint filed under Order VII Rule 1 of the CPC and read with order IV Rule 1 of O.S. Rules, praying for a judgment and decree as follows:-

- a) pass a preliminary decree of partition by dividing the suit property by metes and bounds and to allot 1/5<sup>th</sup> share to the plaintiff
- b) pass such other further order or orders deemed fit to the facts and circumstances of the case and
- g) award the costs of the suit.

For Plaintiff : Mr.P.Sesubalan Raja

For Defendants : D1, 3 & 4 Set exparte on 07.11.2022  
D2 Set exparte on 24.02.2023



C.S.No.294 of 2014

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## **JUDGMENT**

The case of the plaintiff is that his mother predeceased his father on 30.05.1987 and his father died intestate on 15.07.2002 leaving the plaintiff and defendants as his legal heirs. He further submitted that the schedule properties are self acquired properties of his father and after his demise, the properties are in joint possession and enjoyment of plaintiff and defendants. He further submitted that item Nos.2 & 3 schedule properties are situated in Madhavaram, purchased on 20.04.1981 by his father out of his own amount. Item 3 was registered in the name of 1<sup>st</sup> defendant, who taking advantage of the sale deed standing in his name, is now claiming absolute right over the properties. Though the item 3 of property is standing in the name of 1<sup>st</sup> defendant, the plaintiff and other defendants have equal shares in the said properties. The 1<sup>st</sup> defendant instigated the 3<sup>rd</sup> defendant to occupy a portion in the above properties from the year 2007. The 4<sup>th</sup> item of schedule mentioned properties



*C.S.No.294 of 2014*

consisting of an independent house and a building consisting of ground and 1<sup>st</sup> floor ad-measuring 900 square feet. His father allowed the 2<sup>nd</sup> defendant to occupy the abovesaid independent house from the year 1997 and the adjacent property were let out to various tenants. After his demise in the year 2002, the 2<sup>nd</sup> defendant collected the rent and paid the shares of the plaintiff and other defendants then and there. Later sometime, she attempted to claim absolute right over the item 4 of the schedule properties for which Plaintiff and other defendants resisted her attempt, she produced a Will purported to be executed by her father in respect of 900 square feet. She has also filed OP.No.810 of 2005 seeking probate in High Court, Madras. Even according to the alleged Will relied on by the 2<sup>nd</sup> defendant, the other portion where she is in possession, was not allotted to anybody. Taking advantage of the fact that he is the elder member of the family and the documents are in his possession, the 1<sup>st</sup> defendant is attempting to grab the entire properties. Hence, they demanding the 1<sup>st</sup> defendant and other defendants to divide his 1/5<sup>th</sup> share in the schedule mentioned properties, but the 1<sup>st</sup> defendant did not yield to his request. Hence the plaintiff has filed this suit for



*C.S.No.294 of 2014*

partition and separate possession.

2. On perusal of records, it is seen that the defendants 1, 3 & 4 and 2 were set exparte on 07.11.2022 and 24.02.2023 respectively.

3. The plaintiff has been examined as PW1 and exhibits were marked as Ex.P1 to Ex.P5.

4. To substantiate his claim, the plaintiff has filed the proof affidavit. A perusal of the above documents demonstrates that there are three sale deeds and one rectification deed in favour of the plaintiff's father namely Mr.S.K.Kuppusamy and one sale deed in favour of Santhamurthy which have been marked as Ex.A1 to Ex.A5. Moreover, after the demise of the father of the plaintiff in the year 2002, the 2<sup>nd</sup> defendant collected the rent and paid the share to the plaintiff and other defendants then and there. Item No.3 was registered in the name of the 1<sup>st</sup> defendant at the instruction of auditor well known to the plaintiff's family to avoid any problem from the Transport Department wherein



C.S.No.294 of 2014

S.K.Kuppusamy was working. The said decision is not taken of his own discretion. Moreover, the plaintiff and other defendants were receiving share of the rent collected by the 2<sup>nd</sup> defendant. Later it was stopped by her. In the light of the above discussion, I am of the opinion that the plaintiff is entitled to a preliminary decree as prayed for.

5. In the result, preliminary decree is passed as prayed for. No costs.

14.07.2023

gv

Index : Yes/No

Internet : Yes/No

**List of the witnesses examined on the side of the plaintiff:**

PW1 – Mr.K.Ravikumar



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C.S.No.294 of 2014

**A.A.NAKKIRAN.,J.**  
gv

**List of Exhibits marked on the side of the plaintiff :**

| <b><i>Sl.No</i></b> | <b><i>Exhibits</i></b> | <b><i>Description of documents</i></b>                                                     |
|---------------------|------------------------|--------------------------------------------------------------------------------------------|
| 1                   | Ex.P1                  | The certified copy of the sale deed dated 15.11.1973 bearing Doc.No.4292/1973.             |
| 2                   | Ex.P2                  | The certified copy of the sale deed dated 20.04.1981 bearing Doc.No.1637/1981.             |
| 3                   | Ex.P3                  | certified copy of the sale deed dated 20.04.1981 bearing Doc.No.1639/1981.                 |
| 4                   | Ex.P4                  | The certified copy of the sale deed dated 25.12.1997 bearing Doc.No.2274/1988.             |
| 5                   | Ex.P5                  | The certified copy of the Deed of Rectification dated 07.11.2001 bearing Doc.No.7006/2001. |

**14.07.2023**

gv

**C.S.No.294 of 2014**