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CS.No.1548 of 1992

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 27.09.2023

PRONOUNCED ON: 14.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CS.No.1548 of 1992
and
TR.CS.No.354 of 2016

In CS.No.1548/1992:

G.R.Vermhan

...Plaintiff

Vs

1. Dr.H.R.Varman (deceased)
2. Raana @ Mamtavarman
3. Anjanavarman

...Defendants

(LR of defendants 2 and 3 brought on record as per order dated 22.11.1994 in A.No.6664/1994)

4. Arun Balaji

(4th defendant impleaded as per order dt 10.07.2015 in A.No.1253/2015 and order dt 23.02.2016 in A.No.882/2016)

Prayer:- This Civil Suit has been filed, under Order VII Rule 1 of CPC read with Order IV Rule 1 of the Original Side Rules, for the following reliefs:

a) for partition and separate possession of the plaintiffs half share in the estate of the deceased as set out in Schedules “A”, “B” ad “C” (amended



CS.No.1548 of 1992

as per order dated 16.10.2019 in A.No.5780 of 2019)

- b) for appointment of a Receiver to take charge of the estates;
- c) for mesne profits from the date of the plaint until realization and
- d) for costs.

TR.CS.No.354 of 2016

J. Arun Balaji

...Plaintiff

Vs.

Gurkesh Rai Varman

...Defendant

Prayer:- This Transfer Civil Suit has been filed, under Order VII Rule 1 of CPC for the following reliefs:

- a) to pass a preliminary decree for partition of the suit schedule property in to equal shares and allotting $\frac{1}{2}$ share to the plaintiff;
- b) to pass a final decree of partition partitioning the suit schedule property by metes and bounds and
- c) to pay the costs of the suit.

For Plaintiff in CS.No.1548/1992

& for defendant in CS.No.354/2016 : Mr.R.Swaminathan

For Defendants 2 & 3

in CS.No.1548/1992 : Mr.N.Maninarayanan

Mr.G.RM.Palaniappan for D4
D1 – Deceased



CS.No.1548 of 1992

For Plaintiff in
CS.No.354/2016

:Mr.G.RM.Palaniappan

COMMON JUDGEMENT

These Civil Suits have been filed, seeking a judgement and decree, for the reliefs as stated above.

2. For the sake of convenience, the parties are referred to as per the ranking in C.S.No.1548 of 1992.

3. The case of the Plaintiff, as set out, in the plaint is as follows:-

- a) The Plaintiff is the younger son of the late Dr.D.R.Varman (Deceased). The first defendant is the eldest son of the late D.R.Varman. The second defendant is the wife of D.R.H.R.Varman. The Third defendant is the daughter of the deceased. The said Dr.D.R.Varman died intestate as a widower, due to cardiac arrest on 21.12.1991 leaving behind him surviving two sons, namely plaintiff and the defendant to succeed his estate wherein each is entitled to a moiety. Due too acute water shortage the nursing section was closed. His mild heart attack had minimise his activities. Inspite of



CS.No.1548 of 1992

WEB COPY

the same, he succeed to his profession and continue the clinic. However, the defendant protracted the medical college education due to recurring failure. He constructed a multi multi-storey complex with a fully built ground and three upper floors. Presently the plaintiff is in occupation of one room in the second floor and one room in the fourth floor. The estate of the deceased consists of the said property, movables, shares and debentures, goodwill of the clinic, cash in banks, motor car, valuables, units, etc., The immovable property consists of equipment, installation, furniture and fittings and goodwill of the clinic are set out in B schedule and the shares and debentures cash in bank, outstanding due and payable to the estate are set out in schedule 'C'. The plaintiff is also entitled to claim mesne profits in respect of half the plinth area of the said property after giving credit to the portion in his occupation. The cause of action arose on 21.12.1991. The total estate of the deceased is valued at Rs.1.25 Crores and in view of the fact of legal fiction of joint possession , the fixed court fee of Rs.300/- is paid under Section 37(2) of T.N. Court fees and suits Valuation Act. The 4h defendant, has filed OS.No.6499 of 2014 before the XVIII



CS.No.1548 of 1992

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Additional City Civil Court, Chennai claiming to be entitled to a half share in the proeprty in that suit, exactly the A schedule property in the suit. A.Nos.1579 and 1580 of 2015 to stay the further proceedings and for an order of transfer of the said suit to the file of the Court for the purpose of joint trial of the suit. The plaintiff therein had obtained an exparte decree of injunction on 28.04.2014 in OS.No.640 of 2014 on the file of the XVIII Additional City Civil Court, Chennai, inspite of the pendency of the CS.No.1548 of 1992 and the 4th defendant had no right, title or interest, in the schedule A property in this suit, The decree in OS.No.640 of 2014 mentioned above is not valid and non-est in law and is not binding upon the plaintiff. The 4th defendant was aware of the change of spelling in plaintiff's name and inspite of the same, he indulges in various vexatious actios using the same old spelling of the plaintiff's name or wrong ones and giving erroneous address to deprive the plaintiff of his right in A Schedule property in the suit. It is noteworthy that his full name was “Gurkesh Rai Varman” but it was given as “Guresh Rai Varman” in the summons while the name was given as “Gurkesh Rai Varman” in the plaint. Because of th change in the spelling of



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his name, the plaintiff was not able to enter appearance in OS.No.6499 of 2014. It is further submitted that the 4th defendant nor his vendor has any right in the estate of the deceased 1st defendant as per law and the purported sale in favour of the 4th defendant is a non-est in law.

4. The written statement, as set out by the defendants 2 and 3, are as follows:

Taking advantage of the death of the 1st defendant the father of the 3rd defendant, the petitioner has now taken possession of the entire building. In view of the plaintiff taking possession of the property the plaintiff is liable to render accounts regarding the mesne profits. The defendants states that the plaintiff will be entitled to half a share and the 1st defendant and father of 3rd defendant would be entitled to the other half share. Therefore, the defendants 2 and 3 would each be entitled to $\frac{1}{4} + \frac{1}{4}$ share and together they will be entitled to half. He further submitted that the 1st defendant has no objection in giving half share to the plaintiff. Equally the defendants that a decree and judgment



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may also be passed in favour of defendants 2 and 3 for partition and separate possession of their half share in the schedule A, B and C.

5. In the written statement filed by the 4th defendant, it is averred as follows:-

- a) The 4th defendant states that the schedule 'A' property was owned by E. Subbiah Pillai & Sons by partners S. Sundaram, S. Paramasivam and S. Veerababhu and S. Eswaran. They have been adjudicated as insolvents in IP.No.36 of 1958 on the file of this court in its order dated 23.02.1959. The official assignee, in pursuance of court order dated 23.02.1959 had brought the suit schedule 'A' property for sale in public action. He further states that D.R.Varman was declared as the successful bidder and on 27.10.1960 the deed of conveyance was executed between the official assignee of madras high court as vendor and he was purchaser and it was duly registered as Doc.No.4659 of 1960 and from 27.10.1960 onwards D.R. Varman became the absolute owner of the suit schedule 'A' property. He died on 21.12.1991 intestate. Thereafter, his two sons were in absolute



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possession and enjoyment of the Schedule 'A' mentioned property. In 'A' schedule property, 56% shares was allotted to Harmesh Rai Varman and 44% share to Gurkesh Rai Varman and the entire hospital equipment and furnitures were allotted to Harmesh Rai Varman and equal share in the house hold items. On 11.11.1994, Harmesh Rai Varman died and the only surviving legal heris is Mrs.Mahitharani who is his wife. Thereafter Mrs.Mahitharani has 56% share in the A schedule property and decided to sell the same. She appointed Mr.S.V. Thanga Mariyappan as her power agent. He further submitted that the said Mahitharani got legal advice to sell only 50% undivided share in the suit schedule property as the partition deed entered between the said Mahitharani's husband and the defendant was an unregistered document. On 18.08.2009 she completed sale in respect of her 50% undivided share in the 'A' schedule property It is to be noted that as the said Mahitharani was in possession of the entire property, the possession of the entire suit schedule 'A' property. Hence, the 4th defendant is in absolute possession and enjoyment of the suit schedule 'A'



WEB COPY



CS.No.1548 of 1992

property. The XVII Assistant City Civil Court, Chennai, had passed an order of injunction on 29.05.2014 and restrained the plaintiff herein not to disturb the peaceful possession of the 4th defendant. The 4th defendant has been cheated by the plaintiff by not giving his legitimate share in the 'A' schedule property. The act of the plaintiff is illegal. The title of the 4th defendants has been traced right from the year 1960. It is relevant to state that OS.No.6499/2014 was pending and the plaintiff herein had preferred a transfer application in A.No.1580 of 2015. His transfer application has been allowed and the suit filed by the plaintiff was transferred and re-numbered as TR.CS.No.354 of 2016.

He further submitted that in the auction conducted by M/s.Wright & Co, auctioners on behalf of the official assignee on 12.10.1960, Dr.D.R.Varman, being the higher bidder, was declared as the successful bidder and on 27.10.1960 the deed of conveyance was executed between the official assignee of Madras High Court as vendor and Dr.D.R.Varman as purchaser and it was duly registered in Doc.No.4659 of 1960 and from



CS.No.1548 of 1992

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27.10.1960 onwards, Dr.D.R.Varman became the absolute owner of the A schedule property and there is no dispute on the title of the said property. The A schedule property was allotted as 56% share to Harmesh Rai Varman and 44% share to Gurkesh Rai Varman and the entire hospital equipments and furnitures were allotted to Harmesh Rai Varman and equal share in the house hold items. Thereafter Harmesh Rai Varman died on 11.11.1994 leaving behind his wife Mahitharani, as his only surviving legal heir and they did not have any issues. From day one, the father in law of Mahitharani and the father of the Gurkesh Rai Varman were in absolute possession and enjoyment of the A schedule property. Thereafter, Mahitharani has 56% share in the A schedule property and she in order to sell the same, has appointed S.V.Thanga Mariyappan as power agent duly registered as Doc.No.2506 of 2009 dated 14.08.2009. Whereas she got legal advice to sell only 50% undivided share in the 'A' schedule property as the partition deed entered between Mahitharani's husband and the defendant was an unregistered document. She intended to sell 50% of undivided



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share instead of 56% undivided share of land in 'A' schedule property. It is also relevant to state that all the original documents in respect of 'A' schedule property were also handed over to the 4th defendant at the time of execution of the sale deed. It is pertinent to state that the 4th defendant herein had filed OS.No.680 of 2014 on the file of XVII Assistant City Civil Court, Chennai for permanent injunction restraining the plaintiff and his men not to disturb the peaceful possession of the 4th defendant and by a decree dated 29.05.2014 an order of injunction for A schedule property was passed restraining the plaintiff herein not to disturb the peaceful possession of the 4th defendant. He further submitted that inspite of their repeated demands for partition of the 'A' schedule property, the plaintiff is not acceding to the same. The act of the plaintiff by not parting is per se illegal. It is relevnt to state that the plaintiff herein had preferred a transfer application No.1580 of 2015 in CS.No.1548 of 1982 seeking for transfer of the OS.No.6499 of 2014 to the file of this court. The plaintiff had added strangers to the suit schedule property as parties to the present



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proceedings only for the purpose of the case. The suit filed by the plaintiff is not maintainable in law as the legal heirs of the late H.R.Varman have not been added as parties to the suit. Hence the suit has to be dismissed for non-joinder of proper and necessary parties. The building is in dilapidated condition and not fit for permanent human habitation. He further submits that he has a pre-emptive right to purchase the remaining 50% share in the suit schedule as he is already owning the other 50%. The plaintiff has not challenged the sale deed which is in favour of the 4th defendant and seeking for partition and hence it is not valid in the eyes of law. The plaintiff ought to prove his identity before this court before claiming any share over the suit schedule property. This defendant denied all the allegations in respect of the marital life of the deceased 1st defendant. Hence the suit is liable to be dismissed.

6. On the pleadings of the parties, the following issues were framed:-

In CS.No.1548 of 1992

(i) Whether the Plaintiffs and the defendants are entitled to any share in the suit schedule property?



CS.No.1548 of 1992

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(ii) Whether the property is capable for partition by metes and bounds?

(iii) To what other relief the plaintiffs are entitled?

In TR.CS.No.354 of 2016

(i) Whether the Plaintiff is entitled to get $\frac{1}{2}$ share in the suit schedule property?

(ii) Whether the plaintiff is a bonafide purchaser of the half share in the suit schedule property for a valuable consideration?

(iii) Whether the plaintiff is entitled for the suit claim?

(iv) Whether the plaintiff is entitled to claim joint possession of the suit property with the defendant?

(v) Whether the court fee paid for the suit under Section 37(2) is correct?

(vi) To what relief the plaintiff is entitled?

7. On the side of the Plaintiff, Ex.P1 to Ex.P14 were marked and PW.1 was examined. On the side of the Defendants, Ex.D1 to Ex.D14 were marked and DW.1 was examined.



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8. This court heard the arguments advanced by the learned counsel appearing on either side and considered their pleadings and oral and documentary evidences.

**Issue Nos.1 & 2 in CS.No.1548/1992 and
1,2 & 3 in TRCS.No.354/2016:**

9. The learned counsel for the plaintiff would submit that the suit schedule property is belonged to the father of the plaintiff and 1st defendant ie.Dr.D.R.Varman who died intestate on 21.12.1991. After the demise of the father, the 1st defendant who is the elder brother of the plaintiff died on 11.11.1994 leaving behind his wife and his only daughter who are impleaded as the defendants 2 and 3 in the said suit. While being so, the 4th defendant is said to have purchased the suit schedule property by way of Ex.D4 -Sale Deed from Power of Attorney Holder ie. Thanga Mariappan, appointed by Mahitha Rani, stating as a widow of the 1st defendant. Under such circumstances, neither the power of attorney holder, ie. Thanga Mariappan nor Mahitha Rani styled as a widow of the 1st defendant were examined to establish their claim of the suit schedule



CS.No.1548 of 1992

property.

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10.It has been further submitted that without any right, title and interest over the suit property, the said Mahitha Rani stating as a widow of the 1st defendant has executed a Power of Attorney vide Ex.D3 in favour of Thanga Mariyappan without any valid identification proof such as PAN Card and Aadhar Card who thereafter executed Ex.D4-Sale Deed in favour of the 4th defendant. Hence, he seeks the releifs as stated in the C.S. No.1548 of 1992.

11. The Learned counsel for the 4th defendant has submitted that the defendants 2 and 3 are strangers to the scheduled property. It is only the vendor of the 4th defendant who is the wife and legal heir of late H.R.Varman. She had executed the Power of Attorney -Ex.D3 in favour of Thanga Mariappan and based on the said Ex.D3, the Ex.D4-sale deed dated 18.08.2009 was executed in favour of the 4th defendant. Hence, the sale deed dated 18.08.2009 is a legally valid document. Hence, he seeks the releifs as prayed for in the Tr.C.S. No.354 of 2016.

12. On a perusal of the Written statement filed by the defendants



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2 and 3 in C.S. No.1588 of 1992, it is averred that the 2nd defendant is the wife and the 3rd defendant is the daughter of the deceased H.R.Varman who is the 1st defendant. While being so, the 4th defendant cannot make contention as they are strangers.

13. Further, the 4th defendant has contended that Mrs.Mahitha Rani is the wife of the 1st defendant and after his demise, his half share over the suit schedule property is inherited by Mahitha Rani who executed Power of Attorney under Ex.D3 in favour of Thanga Mariappan from whom he has purchased the said property under Ex.D4. Even though Mahitha Rani has executed in favour of Thanga Mariappan, both of them has not mentioned their identification proof in the Power of Attorney. In Ex.D4-Sale Deed, only PAN Number of Thanga Mariappan has been mentioned and PAN Number of Mahitha Rani has not been mentioned. Further, the 4th defendant has purchased the suit schedule property for a consideration of Rs.32 Lakhs only where it is seen from Valuation report-ExP7, it has been mentioned per ground is Rs.100 lakh. It is clearly proved that the suit property has been purchased under lower value.



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14. Even though the 4th defendant has marked many documents in the suit, in order to prove that Mahitha Rani is the wife and the legal heir of the 1st defendant, they create suspicious and not valid document. Further, he has not produced any valid oral and documentary evidence to prove the same. Further, while the 4th defendant has not proved that Mahita Rani is the wife of the 1st defendant, during the pendency of the suit, the Ex.D4-Sale Deed executed in favour of 4th defendant is invalid. While being so, as the suit schedule property belonging to the father of the plaintiff and 1st defendant and the 2nd defendant and the 3rd defendants are the wife and daughter of the 1st defendant as well as they have not raised any objection in granting the relief to the plaintiff as prayed in the present suit, the plaintiff is entitled to 1/2 share and the defendants 2 and 3 are jointly entitled to 1/2 share in the suit schedule property. Since the plaintiff has proved his claim over the suit schedule property, the property is capable for partition by metes and bounds. On a perusal of records Ex.D4 and Ex.P7, the 4th defendant has purchased the property for a lower value. Hence, he is not a bonafide purchaser. Accordingly, issue Nos.1 & 2 in C.S. No.1548 of 1992 are answered in favour of the plaintiff and since



CS.No.1548 of 1992

the plaintiff has 1/2 share in the suit schedule property. Issue Nos.1,2 and 3 in Tr.C.S. No.354 of 2016 are answered against the plaintiff.

Issue Nos.4 and 5 in TRCS.No.354/2016 :

15. In this case, the 4th defendant has stated in the written statement that he is in possession and enjoyment of the suit property. However, he has failed to produce any oral and documentary evidence to prove the same. Further more, in the cross examination, he has answered that he is not in possession of the suit property. Therefore, it is proved that the 4th defendant is not in possession. Hence, he is not entitled to claim joint possession of the suit schedule property. hence the issue No.4 is answered against the plaintiff. While being so, the Court fee paid for the suit under Section 37(2) is not correct. Hence, Issue Nos.4 and 5 are answered against the plaintiff.

Issue Nos.3 in CS.No.1548/1992 and

6 in TRCS.No.354/2016:

16. Since the plaintiff in C.S. No.1548 of 1992 is entitled to ½ share in the suit schedule property, he is entitled to get releif as



CS.No.1548 of 1992

WEB COPY

prayed for and the plaintiff in TR.C.S. No.354 of 2016 is not entitled to any relief. Accordingly, Issue No.3 in C.S.No.1548 of 1992 is answered in favour of the plaintiff and Issue No.6 in Tr.C.S. No.354 is answered against the plaintiff.

17. In the result, preliminary decree is passed as prayed for in CS.No.1548 of 1992 and Tr.CS.No.354 of 2016 is dismissed. No costs.

14.02.2024

Index : Yes/No

Internet : Yes/No

gv/lbm



CS.No.1548 of 1992

WEB COPY

Witnesses examined on the side of the plaintiffs:

P.W.1. - Mr.G.R.Vermhan

Exhibits produced on the side of the plaintiffs:

S.No.	Exhibits	Date	Description
1.	P-1	15.10.2007	Communication sent from Family Court
2.	P-2	03.08.2009	Communication sent from Family Court
3.	P-3	17.10.2007	Envelope of the communication sent from the Family Court
4.	P-4	1988-1992	Family card of the plaintiff
5.	P-5	12.06.2000	Copy of the police complaint along with the copy of newspaper publication
6.	P-6	24.01.2007	Copy of the complaint sent to Commissioner of Police along with acknowledgement
7.	P-7	---	Property tax demand card alone
8.	P-8	27.05.1994	Communication letter sent to the Madras Telephones
9.	P-9	---	Anonymous letter received by the plaintiff(marked subject to objection)
10.	P-10	01.04.2015	Letter received from the Public Information Officer by the plaintiff's advocate
11.	P-11	28.06.2010	Encumbrance certificate
12.	P-12	18.06.2008	Certified copy of the agreement for



CS.No.1548 of 1992

S.No.	Exhibits	Date	Description
			sale
13.	P-13	10.10.2008	Certified copy of the simple mortgage deed
14.	P-14	24.07.2009	Certified copy of the discharge deed

Witnesses examined on the side of the Defendant:

D.W.1. - Mr.J. Arun Balaji

Exhibits produced on the side of the defendants:

S.No.	Exhibits	Date	Description
1.	D1	27.10.1960	Original sale deed in favour of Dr.D.R.Varman
2.	D2	----	Original Partition agreement
3.	D3	14.08.2009	Certified copy of the General Power of Attorney
4.	D4	18.08.2009	Original sale deed in favour of plaintiff
5.	D5	---	Original death certificate of Dr.D.R.Varman issued by Alandur Municipality
6.	D6	---	Xerox copy of the death certificate of Dr.D.R.Varman issued by S.P.Hospital
7.	D7	---	Original legal heirship certificate of Harmesh Rai Varman
8.	D8	28.11.2013	Encumbrance Certificate
9.	D9	31.01.2014	Copy of police complaint
10.	D10	---	Photographs and CDs with bill
11.	D11	---	Original Voter card list of 4 th



CS.No.1548 of 1992

S.No.	Exhibits	Date	Description
			defendant's vendor
12.	D12	---	Original change of Telephone subscription from plaintiff's brother to 4 th defendant's vendor
13.	D13	---	Original marriage photographs of plaintiffs' brother and 4 th defendants' vendor (6 Nos)
14.	D14	28.04.2014	Judgment in OS.NO.680/2014 on the file of XVII Assistant Judge, City Civil Court, Chennai.

14.02.2024



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CS.No.1548 of 1992

A.A.NAKKIRAN,J.

Gv/lbm

Pre-Delivery Judgement in
CS.No.1548 of 1992
and
TR.CS.No.354 of 2016

14.02.2024