



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.04.2024

Pronounced on: 07.06.2024

CORAM:

THE HON'BLE MR.JUSTICE P.B.BALAJI

CS. No.816 of 2007

Smt.Uma Devi

.. Plaintiff

/versus/

1.Sarvamangala (Deceased)
2.M.Sumangala
3.B.Hemavathi
4.M.Leelavathi

...Defendants

Prayer: This Civil Suit is filed under Order IV Rule 1 of the Original Side Rules r/w Order VII Rule 1 of the Code of Civil Procedure, prayed for a judgment and decree against the Defendants:-

a) for partition of the Plaint schedule properties into 4 equal shares and allot one such share to the Plaintiff herein by metes and bounds and with reference to value;

b) for appointment of an Advocate Commissioner to carry out the division and allotment of the Plaintiff's 1/5th share;

c) for a permanent injunction restraining the defendants herein, their



men, agents and assigns from alienating or in any way encumbering the Schedule mentioned properties till the date of passing of the decree for partition and separate possession;

d) for the costs of this suit; and

For Plaintiff : Mr.V.Ramana Reddy

For Defendants : D1 – Died
Defendants 2 to 5 - exparte

J U D G M E N T

The suit has been filed for partition of the plaint schedule properties into four equal shares and for allotment of one share to the plaintiff and also for permanent injunction to restrain the defendants from alienating or encumbering the suit schedule properties, till the date of passing of final decree.

2. The case of the plaintiff is that she is the eldest daughter of her father, K.C.S.Panchakshri and the first defendant herein. The plaintiff's father was a successful business man and had acquired valuable movable and immovable properties, out of his self earned income. According to the plaintiff, the plaintiff's father died intestate on 26.07.1991, leaving behind



the suit schedule properties. After the death of the father of the plaintiff, a panchayat was held in the presence of well-wishers and relatives of the family in the year 1992 and an arrangement was arrived at for sharing of the available properties.

3. The husband of the second defendant, filed an Original Petition No.421 of 2006, alleging that the plaintiff's father had executed a Will and the said Original Petition was converted into a Testamentary Original Suit in TOS No.19 of 2013, as the plaintiff filed a caveat and subsequently, the said Testamentary Original Suit was dismissed for non prosecution. It is also contended that pending the suit, the first defendant died and plaint was also accordingly amended. The plaintiff, therefore prays for decree for partition and permanent injunction.

4. Despite service of summons, none of the defendants have chosen to enter appearance and contest the suit by filing a written statement. Written statement was originally filed by defendants 1, 2 and 4, when the suit was pending before the City Civil Court in OS. No.6624 of 2001, before



being transferred to this Court and assigned the above C.S. No.816 of 2007.

In the said written statement, the defendants have stated that they have admitted the share of the plaintiff and stated that at no point of time, they have attempted to grab the share of the plaintiff and they have always been ready and willing to give the plaintiff's due share in the suit property, excepting item (2) of the suit property which was not available for partition.

5. The following issues were framed by the learned V Assistant City Civil Judge on 14.09.2004:-

- (i) Whether the plaintiff is entitled to get partition of her 1/5th share in the schedule properties?*
- (ii) Whether the plaintiff is entitle for permanent injunction as prayed for?*
- (iii) Whether the properties mentioned in (i) to (vi) of the schedule were sold?*
- (iv) Whether D1 to D4 are willing and ready for partition of the schedule property equally between the plaintiff and D1 to D4 and separate possession of 1/5th share each?*
- (v) To what other relief?*

6. Plaintiff was examined as P.W.1 and on the side of the plaintiff, the following documents were marked by the learned V Assistant City Civil Judge. Ex.A1-Pronote dated 11.07.1988, Ex.A2-Sale Deed dated 03.04.1974 executed by P.U.Abdul Majeed in favour of K.C.S.Panchakshri,



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Ex.A3 – The certificate issued by Poppat Jamal and Sons in favour of Plaintiff's husband dated 21.08.1996, Ex.A4- Receipt dated 24.08.1994 (series) issued by 5th defendant in favour of plaintiff, Ex.A5- Metro Water Tax Card and Receipts in respect of Item 1 of the suit property, Ex.A6- Electricity Meter Card relating to suit item No.1 for the year 1990, Ex.A7- Complaint copy made by the plaintiff dated 05.09.2001 and Ex.A8-Petition and Order in Injunction Petition dated 02.07.2001.

7. However, before this Court, defendants 2 to 5 did not choose to lead any evidence and on 30.01.2024, defendants 2 to 5 were set exparte and thereafter, the suit was directed to be listed before the III Additional Master for recording exparte evidence. On 06.02.2024, the learned III Additional Master has passed an order stating that the evidence of the plaintiff has already been recorded and directed the Registry to place before the Court for further orders.

8. I have heard Mr.Ramana Reddy, learned counsel for plaintiff. According to the learned counsel for the plaintiff, the defendants have not



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denied the share of the plaintiff and he referred to written statement filed by defendants 1, 2 and 4 in this regard. The learned counsel for the plaintiff also submitted that being the daughter of deceased, K.C.S.Panchakshri and the first defendant, who too died pending suit, the share of the plaintiff enlarges to 1/4th and there is no impediment for a preliminary decree being passed.

9. From the pleadings as well as oral and documentary evidence adduced by the plaintiff/P.W.1, I find that the plaintiff has made out her entitlement for a preliminary decree, declaring her 1/4th share in the suit schedule properties. The claim under a Will was also given up with the dismissal of T.O.S. No.19 of 2013.

10. The defendants have categorically admitted the plaintiff's share even in the written statement and also denied the allegation that the defendants are trying to grab the plaintiff's share as well. Therefore, I do not see any necessity for granting relief of permanent injunction as prayed for by the plaintiff. In view of the foregoing, the plaintiff shall be entitled to



a preliminary decree declaring her 1/4th share in suit schedule properties.

The suit is partly decreed in this regard. Insofar as the relief of permanent injunction, the suit is dismissed. Considering the nature of relationship between the parties, there shall be no order as to costs.

07.06.2024

Index : Yes/No
Speaking/Non-speaking order
rkp

Witnesses examined on the side of the plaintiff:

P.W.1. - Umadevi

Exhibits produced on the side of the plaintiff:

S.No.	Exhibits	Date	Description
1.	A-1	11.07.1988	Pronote
2.	A-2	03.04.1974	Sale Deed dated executed by P.U.Abdul Majeed in favour of K.C.S.Panchakshri,
3.	A-3	21.08.1996	The certificate issued by Poppat Jamal and Sons in favour of Plaintiff's husband
4	A-4	24.08.1994	Receipt (series) issued by 5 th defendant in favour of plaintiff,



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5	A-5	--	Metro Water Tax Card and Receipts in respect of Item 1 of the suit property,
6	A-6	--	Electricity Meter Card relating to suit item No.1 for the year 1990,
7	A-7	05.09.2001	Complaint copy made by the plaintiff
8	A-8	02.07.2001	Petition and Order in Injunction Petition dated.

Witnesses examined on the side of the defendants:

Nil.

Documents marked on the side of the defendants:

Nil.

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P.B.BALAJI,J.
rkp

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