

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.01.2017

PRONOUNCED ON : 22. 09.2020

CORAM :

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

C.S.No.830 of 2005

Mrs. Sudha Manjari

.. plaintiff

V.

1. Mrs. C. Latha Janardhana Reddy

2. Mrs. R.Sharmila

.. defendants

PRAYER : Civil suit is filed under Order IV Rule 1 of P/S/ Rules read with order VII Rule 1 of CPC.

(a) for passing a preliminary decree for partition declaring the plaintiff's share in the property viz., No.18, first cross street, second avenue, Ashok Nagar, Chennai 600 083 morefully set out in the schedule hereunder, as 3/8th share, and

(b) directing the first defendant to pay Rs.1,00,000/-.

(c) directing the first defendant to pay Rs.5000/- per month from the date of plaint till the date of preliminary decree and thereafter also at the same rate till the date of passing of final decree

(d) directing the defendants to pay the costs of the suit.

(e)for cost of the suit.

For Plaintiff : Noappearance
For defendants : Mr. M.L. Ramesh,
for R1

J U D G M E N T

The plaintiff has filed a suit for partition against the defendants.

2. The case of the plaintiff, as per the plaint, in brief, reads as follows: -

The suit property was purchased, in the name of the plaintiff, defendants and their mother one Ramani, under a registered Sale Deed dated 21.01.1988 out of the equal contribution of the plaintiff, defendants and their mother R.Ramani. The first defendant is the elder sister and the 2nd defendant is the younger sister of the plaintiff. The plaintiff's father J. Rangadoss Reddy died as early as on 13.06.1985. The plaintiff and her mother were in occupation of a portion in the ground floor of the suit property along with the second defendant. The first defendant, who was married on 22.09.1980, is residing in the first floor with her family right from the date of purchase of the suit property. The remaining

portions in the ground floor and out house were let out and the rent amount was collected by their mother and she only maintained the family including the first defendant's family. Unfortunately, misunderstanding arose between the first defendant and her mother , which forced the mother and the plaintiff to live outside the suit property from June 1988. Ever since, the ground floor portion has been under lock and key and the first defendant also successfully prevented her mother from letting out the property and also caused the tenant in occupation of the ground floor to vacate. The plaintiff and her mother have been forced to live in a rented place, besides they also in loss of rental income from the suit property, she alone being in physical enjoyment of the same. The plaintiff was married on 30.10.1988 and the 2nd defendant was married on 30.10.2001 and they were all along looking after their mother till her demise in January 2004 including spending money for her medical expenses, which runs upto Rs.7,00,000/-. The first defendant never contributed money for their mother. The mother of the plaintiff settled her 1/4 undivided share of the suit property in favour of the plaintiff and the second defendant by way of a registered settlement deed dated 03.11.2003. In view of the said settlement deed, the shares of the

plaintiff and the second defendant has been enlarged to 3/8th share each in the suit property. Though notice was exchanged even during the lifetime of their mother, there was no solution and finally, a notice was issued by the plaintiff on 10.05.2005 demanding partition and separate possession. In spite of the lawyer notice, neither the defendants sent any reply nor come forward for amicable division in the suit property. Hence, the plaintiff has filed the present suit seeking the relief of preliminary decree to declare the plaintiff's 3/8th share in the suit property and also direction to direct the first defendant to pay Rs.1,80,000/- for mesne profits and also for a direction to the first defendant to pay Rs.5000/- towards future mesne profits from the date of plaint till the date of preliminary decree.

3. The case of the first defendant, in brief, is as follows :-

The first defendant denied the fact that the suit property was purchased by equal contribution of all the purchasers, namely, the plaintiff, defendants and their mother. The fact remains that the entire sale consideration for purchasing the property was made by selling the ancestral properties. The father of the plaintiff and the defendants had

received the property from his father and brothers by way of partition. After purchase of the suit property, the other ancestral properties were sold and from and out of the sale proceeds, joint family business, namely Gas Agency, was started in the name of the plaintiff. Apart from that , a property was purchased at Tiruvottriyur for the purpose of the gas business and certain other properties were purchased in the name of the second defendant by investing the consideration for starting the business and purchase of all the properties were made only from and out of the sale consideration received by selling the ancestral properties. The mother of the plaintiff and the defendants was a house wife throughout. The plaintiff and the second defendant were minors at the time of purchase of the suit property and other properties. Therefore, the first defendant has got share in all the properties equally with that of the plaintiff and the second defendant. Shares were purchased in various companies in the name of the plaintiff, second defendant and their mother at the insistence of the plaintiff and the second defendant. Moveable assets were purchased in the name of the plaintiff using the money derived from the ancestral property. A portion in the ground floor was let out by the mother of the plaintiff and the defendants and she has

collected the rents. After the demise of the plaintiff's mother, the plaintiff and the second defendant moved away from the property and now, the property is kept under lock and key and this defendant has not derived any income from the said property. Therefore, there is no question of any mesne profits derived from the property, which is liable to be shared. Since the entire properties had been purchased from and out of the funds of the ancestral property, those properties also to be included in the suit and therefore, the suit cannot be succeeded. The execution of the settlement in the name of the plaintiff and the second defendant were denied .

4. The second defendant did not file written statement and she was set exparte.

5. Based on the pleadings and documents filed by both parties and submission made by both the Counsel, the following issues have been framed by this Court on 17.07.2008 :-

1. Whether the plaintiff is entitled to 3/8th share, as claimed in the plaint, by way of partition?

2. Whether the plaintiff is entitled to mesne profits for 3/8th share?

3. To what other reliefs, the parties are entitled to?

6. After completion of pleadings, during trial, on the side of the plaintiff, she examined herself as PW1 and marked Exs.P1 to P8. On the side of the defendants, the first defendant examined herself as DW1 and no documents have been marked.

7. Heard the rival submissions made on both sides and perused the materials available on record.

8. Issue No. 1 :-

The case of the plaintiff is that the suit property was jointly purchased out of the equal contribution by the plaintiff, defendants and their mother late R.Ramani under the Registered sale deed dated 21.01.1988. The property was purchased as a house property. The first defendant is the elder sister and the second defendant is the younger sister of the plaintiff. The first defendant got married on 22.09.1980. At

that time, her husband was unemployed and she was residing with their family in the first floor of the suit property. The plaintiff, second defendant and their mother were living in a portion of the ground floor and another portion of the ground floor and car shed were let out by the mother and she had collected the rent. The mother maintained the entire family including the family of the first defendant. Since there was misunderstanding between the first defendant and her mother, the plaintiff, the second defendant and their mother were forced to leave the suit property and they were residing in the rental house and the first defendant prevented her mother from letting out the ground floor and forced to vacate the tenants, who were residing in the ground floor. The ground floor is kept vacant from the year 2001 onwards. Even during the life time of the mother, they sent Notice, dated 18.09.2001 to the first defendant calling upon her to come for amicable settlement for partition and the first defendant sent a false reply notice dated 02.10.2001 stating that the suit property and also the other properties were purchased in the name of the plaintiff and the second defendant, out of nucleus from the ancestral property, and therefore, all the properties have to be divided between them and called upon them to furnish the details. Subsequently,

the mother of the plaintiff has settled her 1/4 undivided share in the suit property in favour of the plaintiff and second defendant and she died on 31.01.2004. Thereafter, the plaintiff sent a legal notice on 10.05.2005 to the defendants for amicable settlement for partition of 3/8th share and also for mesne profits against the first defendant, who is in enjoyment of the property. Even though, the first defendant received the said notice, neither she sent any reply nor came for settlement. Hence, the plaintiff is constrained to file the suit for partition.

9. The first defendant admitted the relationship of the parties and also admitted that the suit property was purchased in the joint name of the plaintiff, defendants and their mother. However, she denied that all the parties had contributed equally for purchasing the suit property. According to the first defendant, the suit property was purchased only from and out of the sale proceeds of the joint family properties. Moreover, out of the sale proceeds of the ancestral properties, joint family business, namely Gas Agency was started in the name of the plaintiff. That apart, for godown purpose, some of the properties were purchased at Tiruvottriyur and certain other properties were purchased in

the name of the second defendant out of the joint family nucleus. Therefore, apart from the suit property, there are some other properties standing in the name of the plaintiff and the defendants, which were purchased by utilizing the funds derived from the joint family nucleus. Hence, all that properties must be included in the suit for partition and hence, the suit is not maintainable on the ground of partial partition and the same is liable to be dismissed.

10. It is admitted fact that the suit property has been purchased in the joint name of the plaintiff, defendants and their mother late Ramani under the registered sale deed dated 21.01.1988. According to the plaintiff, the suit property has been purchased by contributing funds equally. But the case of the first defendant is that though it has been purchased in the joint name of the plaintiff, defendants and their mother, it was purchased only out of the sale proceeds of the joint family properties. Further the plaintiff has stated that her mother has settled her 1/4th undivided share in favour of the plaintiff and the second defendant by way of a settlement deed, dated:03.11.2003 and therefore, she is entitled to 3/8th share in the suit property.

11. In order to prove the case of the plaintiff, she examined herself as P.W.1 and she has filed proof affidavit for chief examination, in which she has reiterated the averments made in the plaint. Further to substantiate her claim made in the plaint, she has marked 8 documents as Ex.P.1 to Ex.P.8. She has produced the copy of the Sale Deed dated 21.01.1988, which is marked as Ex.P.1. and the same is admitted by both the parties and the dispute is regarding the payment of the sale proceeds. As stated earlier, according to the plaintiff, she, the defendants and their mother equally contributed from their own fund. But, according to the first defendant, the suit property was purchased out of the sale proceeds of the joint family property. Mere reading of Ex.P.1, Sale deed, clearly shows that the suit property was purchased for a total sale consideration of Rs.3,60,150/-. From the document, it is seen that nowhere it is stated that the suit property was purchased from ancestral nucleus. Further the settlement deed, dated 03.11.2003 is marked as Ex.P.2, which shows that the mother of the plaintiff settled her 1/4 share in favour of the plaintiff and the second defendant. Even in the settlement deed, the mother of the petitioner has recited that they purchased the suit property from their

own funds. Other Exhibits, Ex.P.3 to Ex.P.8 are legal notice, reply notice, rejoinder and reply to the rejoinder and the final pre-suit notice, which shows that initially, the plaintiff's mother, plaintiff and the second defendant issued notice to the first defendant. Subsequently, after the death of the plaintiff's mother, the plaintiff issued the legal notice on 10.05.2005 under Ex.P.7. Though during the life time of the plaintiff's mother, when she sent a notice, the first defendant sent a reply and rejoinder. But, after the death of the mother, when the plaintiff alone sent a notice to the defendants, the first defendant received the notice and the acknowledgement card for the same is marked as Ex.P.8. But, she has not sent reply for the said notice. She has given an explanation, in her written statement, for non sending the reply, is that since some negotiation talks were going, she did not send any reply. But, she has not examined any witness to prove the same and she has not substantiated that there was negotiation and hence, she did not send reply.

12. As far as this issue is concerned, this Court has to see whether the plaintiff has proved her right to claim 3/8th share in the suit property. In this regard, the plaintiff examined herself as P.w.1 and she has deposed that the suit property was purchased under Ex.P.1 and as per Ex.P.1 she is

entitled to 1/4th share in the suit property. Though the defendant has stated that the suit property has been purchased out of the joint family nucleus, and not only this property, some other properties stand in the name of the plaintiff and the second defendant were also purchased out of the Joint family nucleus. But, unfortunately, the first defendant has not produced any documents to prove the same. Even the copy of the Will executed by her grandfather in favour of her father and what are the properties have been divided between her father and his brother and what are the properties came to their family and what are the properties they have sold and consideration, for which, they sold it and what are the properties purchased apart from the suit property in the name of the plaintiff and the second defendant, have not been produced. The plaintiff stoutly denied that the suit property and the other properties are purchased out of the sale proceeds of the ancestral properties. Therefore, when the plaintiff has stated that as per Ex.P.1, the suit property was purchased in the joint name of the plaintiff, defendants and their mother, in the absence of any recitals that all the properties were purchased out of the joint family nucleus, the property is also the joint family property and the contention of the first defendant is not acceptable.

13. To support her contention, the learned counsel for the first defendant has relied upon a judgment reported in a case of ***KENCHEGOWDA (since deceased) by Legal Representatives /vs/ SIDDEGOWDA @ MOTEGOWDA*** reported in ***1994 (4) SUPREME COURT CASES 294*** and the case of ***R.MAHALAKSHMI /VS/ A.V.ANANTHARAMAN AND OTHERS*** reported in ***2009(9) SUPREME COURT CASES 52.***

14. There is no dispute over the proposition of law laid down by the Hon'ble Supreme Court in the above referred decisions submitted by the learned counsel for the first defendant. The facts of the said cases are not applicable to the present case on hand. In those cases, the property stands in the name of the father of the parties and therefore, it is only the father had derived the property from the ancestral properties. But, as far as this case is concerned under Ex.P.1, the suit property was purchased in the joint name of the plaintiff and defendants and their mother and nowhere it is stated that the property was purchased out of the sale proceeds of the joint family property and the plaintiff has produced the

sale deed Ex.P.1 and the same does not show that the property purchased in the names of the members of the joint family. Admittedly there is no joint family after the death of the father of the plaintiff and even during the life time of the father, the first defendant got married in the year 1980 itself and she has also admitted that she was residing with her husband in the first floor of the suit property and she has not proved that there is joint family as stated earlier and no document has been produced to prove that there was joint family property except the defendant a bare statement in the written statement and there is no documentary evidence. As already stated the first defendant has not proved that out of which property's sale proceeds was utilized. Therefore, under the circumstances, the citation referred to by the first respondent is not applicable to the present case on hand.

15. Further, it is settled proposition of law that the property stands in the name of the female is an individual property unless it is established that the properties were purchased out of the joint family nucleus. The person, who claims as joint family property has to prove that it is joint family property. Therefore, in this case, the first defendant has not

substantiated her claim that the suit property was purchased out of the joint family nucleus and some other properties stand in the name of the plaintiff and the property purchased by the second defendant was also purchased from the joint family nucleus and since those properties have not been included in the suit, the suit is hit by partial partition, is also not acceptable in the absence of any documentary evidence that what are the properties have been divided by her father and his brother and what are the properties came to their family and what are the properties they have sold and consideration for which they sold it and what are the properties purchased apart from the suit property in the name of the plaintiff and the second defendant, have not been produced. They have not examined any of the purchaser of the joint family properties and also the sale proceeds received from them and subsequently that was utilized for purchasing the suit property in the name of the plaintiff and the second defendant. Even, the first defendant has not stated any particulars regarding the joint family property and even the document number or even the copy of the Will executed by her grandfather in favour of her father and what are the properties have been divided between her father and his brother and what are the properties came to their family and what are the properties they

have sold and consideration, for which they sold it and what are the properties purchased apart from the suit property in the name of the plaintiff and the second defendant, have not been produced. The mother of the plaintiff and the defendant has recited in the settlement deed Ex.R2 that the suit property was purchased from their own funds. Therefore, even the first defendant has not stated any particulars regarding the other properties and the document number has also not been produced. Therefore, in the absence of the same, this Court finds that the plaintiff has established her claim through oral and documentary evidence and as per Ex.P.1, the plaintiff is entitled to 1/4th share.

16. As far as the settlement deed is concerned, during the life time, her mother executed the settlement deed in favour of the plaintiff and the second defendant under the registered Settlement Deed Ex.P.2. The learned counsel for the defendant would submit that Ex.P.2 has not been proved in the manner known to law as per Section 68 of the Indian Evidence Act. The learned counsel for the plaintiff would submit that the document was not specifically denied by the first defendant and the document is not a Will, it is only a settlement deed and though the

document is required to be attested, but, since the first defendant has not denied the document, as per Proviso of Section 68, attesor need not be examined and mere production of the registered document can substantiate the claim of the parties.

17. Though the plaintiff has filed Ex.P.2, even prior to the suit ,she sent a notice under Ex.P.7, in which, she has clearly stated that the mother of the plaintiff has executed the registered settlement deed and the copy of the same is marked as Ex.P.2. The first defendant has not sent any reply and denied the same. Though she made attempt to give explanation that due to negotiation, she did not send reply, absolutely, there is no evidence to show that there was negotiation after receiving the pre-suit notice and before filing the suit. Even there was no suggestion made during the cross examination to that effect. Therefore, it is seen that the first defendant has not denied the execution of Ex.P.2 Settlement Deed. Even in paragraph No.9 of the written statement, the first defendant has stated that the settlement deed dated 03.11.2003 on the file of the Sub Registrar , Ashok Nagar is not known to her and therefore, she has stated that only she has not aware of that fact, but she has not

denied that her mother has executed the settlement. Therefore, under this circumstances, as per the Provisio of Section 68 of the Indian Evidence Act, since the first defendant has not denied the execution of the settlement deed, non-examination of any of the attesting witness will not affect the case of the plaintiff. Therefore, as per Ex.P.1, the plaintiff is entitled to 1/4 th share and as per Ex.P.2, the plaintiff is entitled to 1/8th share in the suit property and therefore, the plaintiff is totally entitled to 3/8th share in the suit property and hence, the issue no.1 is answered in favour of the plaintiff.

18. Issue No.2:-

Since this Court has come to a conclusion that the plaintiff is entitled to 3/8th share in the suit property, and admittedly the first defendant is in occupation of the first floor of the suit property , certainly, the plaintiff is entitled to mesne profits for her 3/8th share in the suit property. But, however as far as the mesne profits is concerned , the plaintiff is at liberty to work out her remedy under Order 20 Rule 12 of Civil Procedure Cord and the issue no.2 is answered accordingly.

19. Issue No.3.

Considering the relationship between the parties, there is no order as to cost and the plaintiff is entitled for the preliminary decree for her 3/8th share in the suit property and the mesne profit is concerned, she can work out her remedy under Order 20 Rule 12 of Civil Procedure Code and this issue No.3 is answered accordingly.

20. In the result, the suit is decreed as prayed for. No costs.

22. 09.2020.

Index : Yes/No
Internet : Yes/No
mrp

List of Witness examined on the side of the plaintiff

Sudha Manjari - PW1

List of documents marked on the side of the plaintiff

SL. No	Exhibits	DESCRIPTION OF DOCUMENTS	DATED
1	P1	Xerox copy of sale deed between the plaintiff, defendant and their mother	21.01.1988
2	P2	Original settlement deed between	03.11.2003

		the plaintiff, her mother and 2nd defenddant	
3	P3	Xerox copy of legal notice	18.09.2001
4	P4	Xerox copy of reply	02.10.2001
5	P5	Xerox copy of rejoinder notice	20.10.2001
6	P6	Xerox copy of reply notice sent by 1st defendant to plaintiff's mother	10.12.2001
7	P7	Xerox copy of legal notice sent by the plaintiff to the defendants	10.05.2005
8	P8	Postal Acknowledgment	13.05.2005

List of Witness examined on the side of the defendants

C.Latha Janardhana Reddy - DW1

List of documents marked on the side of the defendants

Nil

22.09.2020

WEB COPY

C.S.No.830 of 2005

P. VELMURUGAN, J.

mrp



Pre Delivery Judgment in

C.S.No.830 of 2005

WEB COPY

22. 09.2020.