



C.S No.120 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 06.02.2024

CORAM:

THE HON'BLE MR.JUSTICE A.A.NAKKIRAN

C.S.No.120 of 2023

and

O.A.No.614 of 2023

Saroja

... Plaintiff

vs.

C.V.Bharathan

... Defendant

Prayer: Civil Suit filed under Order IV Rule 1 of O.S Rules read with Order VII Rule 1 of Civil Procedure Code praying for the following judgment and decree as against the defendant:

a) For partition of the suit house property into half shares and for the allotment of one such share with reference to the value there of by metes and bounds by appointing an Advocate Commissioner to divide the suit house property

b) For permanent injunction restraining he defendant from alienating or transferring or encumbering a suit house property until partition is effected by metes and bounds.

c) for costs.



WEB COPY



C.S No.120 of 2023

For Plaintiffs : M/s.V.Venkatasamy

For Defendant : Set exparte

J U D G M E N T

This Civil Suit has been filed for partition, permanent injunction and for costs.

2.0 The brief facts of the case of the plaintiffs are as follows:

The plaintiff is the daughter of non-biological parents C.S Veera Raghavan and Kamala Veera Raghavan, who are biological parents of the defendant herein. Thus, the defendant is her brother by affinity with family though not in blood. Their father C.S.Veera Raghavan was originally employed in Imperial Bank which was subsequently renamed as State Bank of India. Their father married their mother Kamala when he was working at Nagapattinam. Out of their wed lock, the defendant was born 7 years after their marriage. Thereafter, their mother had suffered mental illness and behaved inhumanly and due to which, she could not give much attention to the defendant herein at his childhood even from the date of birth. Even after



C.S No.120 of 2023

taking treatment, she was not completely cured. In such situation, it is necessitated to their father Veera Raghavan to employ a maid servant and a main servant from Kumbakonam was also employed to look after the defendant herein and their mother. In view of occasional violent behaviors of their mother, the main servant expressed her unwillingness to continue the job. Hence the defendant's aunt Komalavalli, suggested to bring a female child of close relative to look after the defendant and mother Kamala. In view of such suggestion, the defendant's father Veera Raghavan approached the plaintiff's original parents with a firm conclusion to take their elder daughter, the plaintiff herein, as his own daughter since the plaintiff's original mother Alamelu happened to be a cousin sister to his wife Kamala. Considering the mental disorder of defendant's mother who is also none other than cousin sister of plaintiff's original mother, plaintiff's original parents allowed C.S Veera Raghavan to take the plaintiff as his own daughter. There was no custom prevailed among Hindus to adopt female child before the year 1956. But, it is necessitated for her non biological father to take a female child elder than his son, the defendant herein and adopted the plaintiff and recognized her for temporal consideration and not



for spiritual consideration. Thus, the plaintiff is the sister of the defendant herein by affinity and one of the family members in the family of late C.S.Veera Raghavan and Kamala. Thereafter, the plaintiff was given in marriage to Sampath Kumar and the marriage took place at Sri Rangam in Trichy on 25.01.1972. After the marriage, the plaintiff and her husband Sampathkumar lived along with her parents at Chennai as promised.

2.01. The plaintiff's father C.S.Veera Raghavan was a member in State Bank of India Madras Circle Supervising Staff Co-operative Building Society Limited No.XNC -509, Madras. The society purchased lands in Urur Village in Adya limits and formed a layout to provide house site to its members. Since her father was a member in that society, Plot No.191 in the layout No.115/71 formed in Survey No.56/2 (Part) T.S No.2(Part) of Block No.20 in the Sub Registration District of Adyar i.e the suit schedule property, measuring an extent of 1.371 grounds was allotted to him by the society. After payment of entire installments, a sale deed dated 26.03.1990 was executed by the Secretary of the society in favour of the plaintiff's father in respect of the land and building bearing Door No.2, New No.52, 1st Main Road, Karpagam Gardens, Adyar, Chennai-20 which is morefully



described in the schedule and it is a self acquired property of late Veera Raghavan. He died on 23.4.1990 and subsequently, her mother Kamala also died on 30.08.1993. They did not execute any Will and they died intestate. She being the daughter is entitled to one half share in the suit schedule property. After the death of her parents, the plaintiff, her husband and daughter named Rangapriya were living in the suit schedule property for a period of 3 years. Thereafter, they shifted their residence and after the marriage of their daughter, the plaintiff and her husband lived in Madipakkam in a rented house for two years and thereafter, they left Hyderabad to look after their daughter's child. Thereafter, the defendant leased out the suit schedule property to a tenant and since he did not pay monthly rent, he had vacated the tenant.

2.02. After the demise of her parents, the suit house property is devolved on the plaintiff and the defendant. Both the plaintiff and the defendant have been enjoying the suit property in common. The defendant used to give money to the plaintiff after she left the parental house. During the pandemic period, the defendant did not given money and stopped the payment. In the meantime, the plaintiff was informed that the defendant had



C.S No.120 of 2023

taken steps to alienate the suit property. Hence the plaintiff issued a lawyer's notice on 05.10.2021. For the said notice, there was no reply.

Thereafter, her cousin C.V.Srinivasan, who is the brother of her father advised the defendant to give a share in the suit property to the plaintiff as she is the adopted daughter of her father Veera Raghavan and elder sister of the defendant who had taken care of him from childhood. Even thereafter, he did not react without any expression. Hence the plaintiff issued second lawyer's notice dated 14.11.2022 to the defendant not to alienate the suit property. Hence the suit.

3.Though summons was served on the defendant, he did not enter appearance before this Court and hence, he was set exparte 06.11.2023.

4. Heard the learned counsel for the plaintiff and perused the records.

5. PW.1, in her evidence has stated that the plaintiff/PW1 is the adopted daughter of her parents namely late.C.S.Veera Raghavan and late Kamala and sister of the defendant. She further stated that the suit schedule



C.S No.120 of 2023

property viz., land and building bearing Door No.22, New No.52, 1st Main Road, Karpagam Gardens, Adyar, Chennai-20 belonged to the father of both the plaintiff and the defendant, namely C.S.Veera Raghavan. The said property was allotted to him by the State Bank of India Madras Circle Supervising Staff Co-operative Building Society Limited and a sale deed was executed in favour of C.S.Veera Raghavan on 26.03.1990. Ex.P1 is the certified copy of sale deed. Both the father and mother died intestate leaving behind the plaintiff and the defendant as their surviving legal heirs. After the demise of her parents, the suit house property is devolved on both the plaintiff and the defendant. But the defendant had made an attempt to alienate the suit schedule property. Hence the plaintiff issued a lawyer's notice on 05.10.2021. For the said notice, there was no reply. Again, the plaintiff issued second legal notice to the defendant on 14.11.2022, which is marked as Ex.P2. Even after receipt of notice, the defendant is making hectic attempts to dispose of the suit property with a view to defeat the plaintiff's claim. Hence, the plaintiff has filed this suit for partition. To prove the case of the plaintiff/PW1, one Mr.Rajagopalan, who is the relative of both the plaintiff and defendant was examined as PW2 and he



C.S No.120 of 2023

corroborated the evidence of PW1/plaintiff.

WEB COPY

6. From the evidence of P.W.1 and P.W.2 and the documents filed, it is proved that the plaintiff is the adopted daughter of her parents namely late C.S.Veera Raghavan and late Kamala and sister of the defendant. It is also proved that the suit schedule property belonged to the father of both the plaintiff and the defendant and they are entitled to equal share in the suit schedule property. Though the defendant was served summons, he had not entered appearance, and hence he was set exparte. Therefore, the evidence of P.W.1 and documents filed on behalf of the plaintiff remain unchallenged and there is no rebuttal evidence against the case of the plaintiffs. Hence, the plaintiffs have proved her case.

7. In the result, the suit is decreed as prayed for with costs. Accordingly, a preliminary decree is passed.

06.02.2024

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

8/11



WEB COPY



C.S No.120 of 2023

Witnesses examined on the side of the plaintiffs:

P.W.1. - S.Saroja
P.W.2 - J.Rajagopalan

Exhibits produced on the side of the plaintiff:

<i>Sl.No.</i>	<i>Exhibits</i>	<i>Date</i>	<i>Description of documents</i>
1	P1	26.03.1190	Certified copy of the sale deed executed in favour of C.S.Veera Raghavan.
2	P2	14.11.2022	Office copy of the 2nd lawyer's notice sent by the plaintiff to the defendant.

06.02.2024



WEB COPY



C.S No.120 of 2023

A.A.NAKKIRAN,J.

uma

C.S.No.120 of 2023