



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

C.S.Nos. 270 & 274 of 2021

C.S.No. 270 of 2021

1. Mrs. Bharathi Periyasamy
2. Mr. T.S.Prabakaran Babu
3. Mrs.P.Shanmuga Priya
4. Mr.P.Senthil Kumar ... Plaintiffs

Vs.

1. Mr.Raghunathan
2. Mrs. Shantha Selvaraj
3. Mrs.J.Dhanvanthri ...Defendants

Prayer : Complaint filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree to



a) pass a preliminary decree of partition in respect of Schedule A to C properties by allotting $1/5^{\text{th}}$ share to the 1^{st} plaintiff and $1/5^{\text{th}}$ share jointly to the plaintiffs 2 to 4 by dividing metes and bounds and deliver the share allotted to the plaintiffs;

b) appoint an advocate commissioner to effect division of the schedule properties by metes and bounds and to allot $1/5^{\text{th}}$ share to the first plaintiff and $1/5^{\text{th}}$ share jointly to the plaintiffs 2 to 4 in respect of rights and entitlements in the suit properties;

c) direct the defendants to render true and proper accounts in respect of the rental income/mesne profits received from the schedule A and B properties from 26.08.2020 and direct the defendants to pay $2/5^{\text{th}}$ share to the plaintiffs; and

d) direct the defendants to pay $1/5^{\text{th}}$ share of the 1^{st} plaintiff and $1/5^{\text{th}}$ share of the plaintiffs 2 to 4 in the future mesne profits/rental income from the schedule properties from the date of plaint till delivery of separate possession, and

(e) for costs of the suit.

For plaintiffs : Mr. T.Sundar Rajan

For Defendants 1 & 2: Mr.R.Thiagarajan



C.S.No. 274 of 2021

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1. L.Raghunathan

2. Mrs.Shantha Selvaraj

... Plaintiffs

Vs.

1. Mrs. Bharathi Periyasamy

2. Mr.T.S.Prabakaran Babu

3. Mr.P.Senthil Kumar

4. Mrs.P.Shanmuga Priya

5. Mrs.J.Dhanvanthri

...Defendants

Prayer : Complaint filed under Order VII Rule 1 CPC read with Order IV Rule 1 of OS Rules, to pass a Judgment and Decree to

a) pass a preliminary decree declaring the first plaintiff's 6/10 share in item 1 of the suit schedule mentioned property as well as 1/5 share in item 2 of the suit schedule mentioned property, the 2nd plaintiff's 1/10 share in item 1 of the suit schedule mentioned property as well as 1/5 share in item 2 of the suit schedule mentioned property and effect division of the property in accordance with the entitlement of the plaintiffs 1 & 2 respectively and put the plaintiffs 1 & 2 in possession thereof;



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b) appoint an Advocate Commissioner to effect division of the property by metes and bounds in accordance with their right and entitlement as per the preliminary decree and in the event if the division of the properties are not feasible by metes and bounds, direct the defendants to sell the property more fully described in the schedule of property items 1 and 2 to the plaintiffs for a value to be fixed by this Hon'ble Court;

c) directing an enquiry into mesne profits in respect of the suit schedule mentioned property items 1 and 2 and distribute the proceeds according to the entitlement of the plaintiffs after defraying all the expenses incurred for payment of statutory dues such as property tax, water and sewerage tax etc., in respect of the suit schedule property on payment of such court fee payable thereon before passing of Final Decree;

d) Grant a decree for permanent injunction restraining the defendants, their men, agents, servants or any other person or persons claiming through them from in any manner alienating or dealing with the suit schedule mentioned property items 1 and 2 either by way of sale, mortgage, lease or otherwise except in accordance with law;

e) Grant costs of the suit.

For plaintiffs : Mr.R.Thiagarajan

For Defendants 1 & 2: Mr. T.Sundar Rajan

**COMMON ORDER**

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Both the suits have been filed seeking partition and separate possession of the same properties, namely, a property at No. 12, Gangaianman Street, Royoapettah, Chennai, measuring 1 ground and 149 sq.ft., which has been described as Item No.I and property at Door No.6/1, Old No.5, Venkataratnam Road, Vania Teynampet, Chennai which consists of a ground, first and second floors with land measuring 2350.5 sq.ft., and thereabouts inclusive of 10' 3" wide common passage leading from venkatratnam Road and that property is described as Item No.2.

2. Reading of both the complaints reveal that there is yet another schedule which is given namely relating to Fixed Deposit, Bank Accounts and Gold Jewellery and silver articles. It is uniformly contended that the Fixed Deposit, Bank Account, the gold jewellery and silver article are not available as on date for effecting partition among the parties. They originally belonged to Revathi Ammal and it is contended that even during her lifetime, she had gifted them away and the fixed deposit has also been matured and there is a very negligable amount in the bank account.



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3. The plaintiffs in C.S.No. 270 of 2021 are the defendants in C.S.No. 274 of 2021. The third defendant in C.S.No. 270 of 2021 is also one of the defendants in C.S.No. 274 of 2021. The first and second defendants in C.S.No. 270 of 2021 are the plaintiffs in C.S.No. 274 of 2021.

4. The parties have entered into a Joint Memorandum of Compromise with respect to both the suits. They had agreed that at some point of time, they would sell A and B schedule properties, and share the proceeds in 1/5th share. Till such time, the second plaintiff in C.S.No. 274 of 2021, who is the second defendant in C.S.No. 270 of 2021, Mrs. Shantha Selvaraj, who is a senior citizen of advanced age had been permitted to reside in the property at Gangaianman Street in Chennai.

5. The first plaintiff in C.S.No. 274 of 2021, L. Raghunathan, who is the first defendant in C.S.No. 270 of 2021 shall continue to collect the rents but shall account for the same and after defraying the expenses shall share the amounts, among the other parties. These are the broad terms of the settlement reached among the parties.



6. All the parties except Mrs. Shantha Selvaraj, second plaintiff in C.S.No. 274 of 2021 / second defendant in C.S.No. 270 of 2021, are present in Court. The learned counsels are also present. It is stated that Mrs. Shantha Selvaraj has suffered an injury in her hip and is immobile.

7. Taking all the facts into consideration, the compromise is recorded and a preliminary decree is passed in accordance with the Joint Memo of Compromise dated 27.03.2024. It is also to be mentioned that the Joint Memo of Compromise had been signed by the parties to the two suits and also by the learned counsel representing all the parties.

8. The Joint Memo of Compromise shall form part of the preliminary decree. As and when the parties are able to identify the purchasers for A and B schedule property, they are at liberty to file application for final decree for the actual division of the sale proceeds in accordance with the settlement agreed by this compromise. There is no order as to costs.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking Order

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List of Witnesses Examined on the side of the Plaintiffs:-

1. P.W.1 – Mrs. Bharathi Periyasamy



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1. List of Exhibits Marked on the side of the Plaintiff:-

1. Ex.P1 is the certified copy of the plaint filed in C.S.No. 188 of 1962 dated 18.04.1961;
2. Ex.P2 is the certified copy of the preliminary compromise decree in C.S.No. 188 of 1962 dated 01.01.1964;
3. Ex.P3 is certified copy of the final decree in Appln. No. 344 /66 in C.S.No. 188 of 1962 with plan dated 01.04.1966;
4. Ex.P4 is downloaded copy of the death certificate of Kala Prabakar dated 29.01.2021;
5. Ex.P5 is the photocopy of the fixed deposit receipt No.000473 of Standard Chartered Bank dated 26.04.1996;
6. Ex.P6 is the Online printout of death certificate of Mr.J.Lakshmi Kandhan dated 08.07.2021;
7. Ex.P7 is the Online printout of death certificate of Mrs.Devaki Ammal dated 10.09.2020;
8. Ex.P8 is the Office copy of the legal notice dated 02.03.2021 with original acknowledgement cards (4 nos.);
9. Ex.P9 – served copy of the reply notice dated 08.03.2021;
10. Ex.P10 is the original reply notice issued by Standard Chartered Bank dated 10.03.2021;
11. Ex.P11 is the Office copy of the rejoinder dated 29.03.2021 with acknowledgement card.

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Note: Issue certified copy on 29.04.2024



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C.V.KARTHIKEYAN, J.
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