



C.S.No.254 of 2014

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.12.2024

PRONOUNCED ON : 09.05.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.254 of 2011

1.C.Rabia Begum
2.C.Abdul Aleem

.. Plaintiffs

..Vs..

1.C.S.Khathijuthus Soghara
2.C.S.Ayesha Siddiquea
3.C.S.Mohamed Usman
4.C.S.Mohamed Hasan
5.C.S.Mohamed Hussain
6.C.S.Mohamed Ibrahim
7.C.S.Umai Zainab
8.C.S.Umai Maimuna
9.C.S.Umai Salma
10.C.S.Katheeja Begum (deceased)
11.C.Ayesha Begum
12.C.Bheemraj Mutha Jain
13.C.Abdul Wahid
14.C.Zareena Begum
15.C.Fathima Begum
16.C.Abdul Basith
(Defendants 13 to 16 were impleaded
as legal heirs of the deceased
10th defendant as per the order of this
Court dated 10.11.2022 made in
A.No.2949 of 2022)

.. Defendants



WEB COPY

Prayer: Civil Suit has been filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 2 CPC, praying to pass the following judgement and decree against the defendants:

a) declaration that the plaintiffs are entitled to enforce their right of pre-emption to buy the shares of the defendants 1 to 11 in the suit "B" schedule property as per the compromise decree in C.S No.570 of 1978 dated 30.04.1985.

b) consequently direct the defendants 1 to 12 by a decree for mandatory injunction to jointly execute a sale deed in respect of the suit "B" schedule property in favour of the plaintiffs herein, after receiving the sum of Rs.1,40,22,400/- and on their failure, and on the plaintiffs depositing the sum of Rs.1,40,22,400/-, this Hon'ble Court shall direct the Asst. Registrar of High Court of Madras to execute the sale deed in respect of the suit "B" schedule property in favour of the plaintiffs.

c) for costs.

For Plaintiffs : Mrs.Chitra Sampath
Senior Counsel
Assisted by Mr.T.S.Bhaskaran

For Defendants : D1 to D9, D11 to D16- Set exparte
D10-deceased



JUDGMENT

WEB COPY

This Civil Suit has been filed for declaration, mandatory injunction and for costs.

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

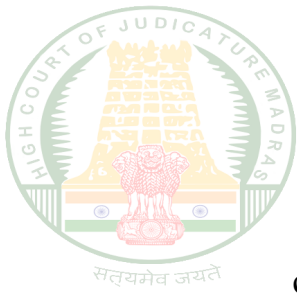
- a) The plaintiffs state that the property of house, ground and premises situated in No.29, Stringers Street, Lone Square, Chennai-600 108, morefully described hereunder as suit "A" schedule of this plaint was a subject matter of a suit filed in C.S.No.570 of 1978 on the file of this Court, for partition by one C.Mohamed Siddique against his sister C.Saifa Bi and his predeceased brother's wife C.Zualaikha Bi. The above suit ended in a compromise decree between the brother, sister and his predeceased brother's wife C.Zualikha Bi and this Court was pleased to pass a judgment and decree on 30.04.1985. As per the above compromise decree, 2/3 share in the suit "A" schedule property herein was allotted to the brother C.Mohamed Siddique, and 1/3rd share was allotted to the sister C.Safia Bi. Further, as per the clause 8 of the Memorandum of Compromise, in the event of anyone of the parties decide to sell their share in the suit property



they should approach the other party and offer the same in writing by registered post. If the other party refuses to accept the offer, the parties who want to sell the property, can sell the same to the third parties. Hence, it was clear that a right of pre-emption had been given to the parties and their heirs under the compromise decree. The clause 8 of the compromise decree is reproduced hereunder:

"In the event of any one of the parties (ie) the plaintiff or the first defendant or their "heirs" are anxious to sell Item No.1 of the A-schedule property, they shall offer the same to the other party for a fair and reasonable market rate prevailing at that time and such offer shall be communicated in writing by registered post and that if the other party is not willing to accept the said offer, the plaintiff or the first defendant or their heirs shall be at liberty to sell the same jointly to third parties".

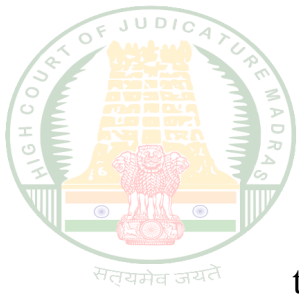
- b) The plaintiffs state that Mr.C.Mohamed Siddique died on 16.05.1985 leaving behind his three wives and children born through them. The first wife had 15 children, the second wife had 3



C.S.No.254 of 2014

WEB COPY

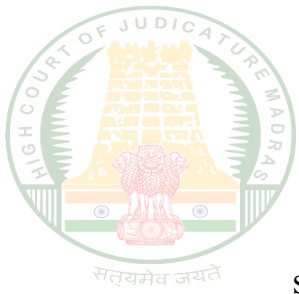
children and the third wife had 7 children. The second wife of the said C.Mohamed Siddique, namely Sayeeda Asia Begum and her son and 2 daughters joined together and filed a suit in C.S No.98 of 1991 on the file of Original Side of this Hon'ble Court, seeking for their 40/288 share in the estate of C.Mohamed Siddique against the other legal heirs of C.Mohamed Siddique and Safia Bee. During the pendency of the suit in C.S No.98 of 1991, C.Safia Bee died leaving behind her three daughters and the legal heirs of her pre-deceased son namely C.Abdul Shukoor. Further, during the life time of C.Safia Bee, she settled her undivided 1/3rd share in the Item 1 of the suit "A" schedule property in C.S No.98 of 1991 in favour of her three grandsons, born through her pre-deceased son namely C.Abdul Shukoor and to her three daughters by a registered settlement deed (hibba/gift) dated 15.10.2001 and as a consequence they had been impleaded as parties to the suit. The 1st plaintiff is one of the daughters of C.Safia Bee. The 2nd plaintiff is one of the grandsons of C.Safia Bee born through her pre-deceased son. The defendants 1 and 2 herein are the daughters born through the 2nd wife of C.Mohamed Siddique, the defendants 3 to 9 are the children born



WEB COPY

through the 1st wife of C.Mohamed Siddique. The defendants 10 and 11 are the other two daughters of C.Safia Bee. The 12th defendant is the subsequent purchaser of the undivided share of the defendants 1 to 11 herein in the suit "A" schedule property. Since one C.S.Umai Habiba, the daughter of C.Mohamed Siddique born through his 1st wife, had also entered into agreement of sale with a third party but she had not alienated her share under registered document, she was not made as a party to this suit.

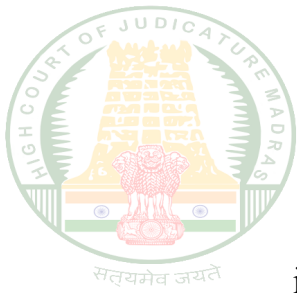
- c) A preliminary decree was first passed in the suit in C.S.No.98 of 1991 on 03.09.1997, and further a preliminary decree had also been passed on 09.08.1999 allotting the shares to the respective parties. Thereafter, applications had been filed seeking for passing of a final decree and for appointment of an Advocate Commissioner to divide the suit properties by metes and bounds. This Court was pleased to appoint an Advocate Commissioner and the Advocate Commissioner filed a report suggesting the mode of division. During the pendency of the final decree proceedings, it appears that the defendants 1 to 11 appears to have entered into various sale agreements either in writing or orally with some third parties for the



WEB COPY

sale of their respective undivided share in the suit "A" schedule property. The plaintiffs came to know about the same and had represented through their counsel in the course of the hearing of the final decree proceedings in the court, that they have a right to buy the shares who are willing to sell their share in the suit property. At that point of time, none of the defendants 1 to 11 had alienated their shares under registered documents. This Court while passing orders in the final decree proceedings on 6.4.2010 observed that it was open to the plaintiffs to enforce their right of pre-emption by way of separate proceedings.

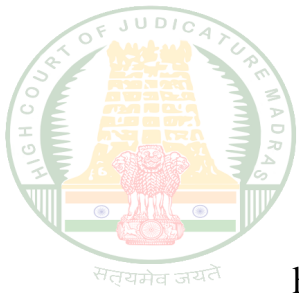
- d) The plaintiffs were informed that the defendants 10 and 11 had entered into agreements with one M.Rasik Sultan and Amanullah with regard to their shares. The plaintiffs had therefore issued a legal notice on 10.04.2010 to the defendants 10 and 11 marking a copy of the notice to the proposed buyer informing them about the right of pre-emption in the suit property and also offering to pay the value of their share as reflected in the agreement of sale. The defendants 10 and 11 issued a reply on 26.04.2010 denying the pre-emption right of the plaintiffs to purchase the suit property. In order to avoid the



WEB COPY

involvement of the rights of the various third parties in the suit property, the plaintiffs had given a public notice in a daily newspaper in "Malai Malar" dated 25.05.2010, cautioning the public not to enter into any dealing with the suit "A" schedule property, in view of the right of pre-emption given to the legal heirs of C.Mohamed Siddique and C.Safia Bee. Since the plaintiffs were not aware of the decision of the defendants 1 to 9 to sell their shares also they had given a public notice in the newspaper expressing their intention to buy the shares of all the co-owners of the suit property.

- e) In the final decree proceedings, taking into consideration that some of the sharers were desirous of disposing of their share, this Court had allotted the shares of the defendants 1 to 11 measuring an extent of 4248.5 sq.ft., morefully described hereunder as suit "B" schedule property, which is in the southern extreme of the suit "A" schedule property. It appears that after the passing of the final decree on 6.4.2010, the defendants 1 to 11, without complying with the condition in the decree in O.S No.570 of 1978 referred above had executed several sale deeds as mentioned hereunder in respect of their shares in favour of the 12th defendant and not the agreement

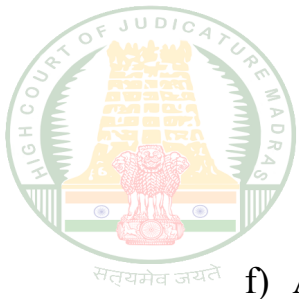


C.S.No.254 of 2014

WEB COPY

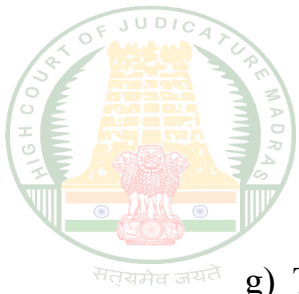
holder mentioned in their legal notice. The plaintiffs had applied for the copy of the encumbrance certificate in the month of February, 2011 after receiving the the copy of final decree, and to their surprise they found that the defendants 1 to 11 had sold their shares allotted to them in the final decree to the 12th defendant under various sale deeds for the sale consideration as mentioned hereunder:

S.No.	Vendor	Date & Doc.No.	Sale value Rs.
1	C.S.Khathijuthus Soghara	14.05.10-612/10	8,71,000/-
2	C.S.Ayesha Siddique	14.05.10-613/10	8,71,000/-
3	C.S.Mohamed Usman	14.05.10-614/10	12,20,000/-
4	C.S.Mohamed Hasan	24.05.10-647/10	12,19,200/-
5	C.S.Mohamed Hussain	14.07.10-847/10	12,19,200/-
6	C.S.Mohamed Ibrahim	24.05.10-648/10	12,19,200/-
7	C.S.Umai Zainab	14.05.10-611/10	6,10,000/-
8	C.S.Umai Maimuna	14.07.10-848/10	6,10,000/-
9	C.S.Umai Salma	14.07.10-849/10	6,10,000/-
10	C.Katheeeja Begum	08.07.10-822/10	27,86,400/-
11	C.Ayesha Begum	08.07.10-823/10	27,86,400/-



WEB COPY

f) As per clause 8 of the above said compromise decree in C.S No.570/1978, the plaintiffs herein, who are the legal heirs of C.Safia Bee and Donees under the settlement executed by C.Safia Bee have a right of pre-emption to purchase the shares of other legal heirs of Mohamed Siddique and C.Safia Bee in the event of a sale in favour of a third party by them. But, the defendants 1 to 11 herein had in violation of the clause 8 of the compromise decree passed in C.S No.570 of 1978, had sold the suit "B" schedule property having an extent of 4248 1/2 sq.ft. to the 12th defendant, who is a third party, without offering the same to the other legal heirs of Mohamed Siddique and C.Safia Bee. Hence the sale entered into between the defendants 1 to 11 in favour of the 12th defendant is not valid and the same is not binding on these plaintiffs. The plaintiffs on coming to know about the above sale deeds had issued a legal notice to the 12th defendant on 23.2.2011 calling upon him to convey the rights purchased by him from the defendants 1 to 11 in regard to the suit property agreeing to pay the sale consideration mentioned in the sale deeds executed in his favour. The 12th defendant had not cared to issue any reply to the said notice to this day.



WEB COPY

g) The plaintiffs have a right of pre-emption to buy the shares of the defendants 1 to 11 in the suit property for the sum of Rs.1,40,22,400/- being the sale price reflected in the sale deeds executed by them in favour of the 12th defendant, based on the compromise decree dated 30.04.1985 in C.S No.570 of 1978. The defendants 1 to 11 had failed to adhere to the terms of the compromise of giving a prior notice of their intention to sell their shares and had not offered to sell it to the plaintiffs inspite of the fact that they were put on notice of the plaintiffs intention to buy expressed through their counsel during the hearing of the final decree application in C.S No.98 of 1991. Inspite of the offer of the plaintiffs to buy expressed also through their legal notice dated 10.04.2010 and through the public notice in the newspaper "Malai Malar" dated 25.5.2010, the conduct of the defendants in selling their interests to the 12th defendant is in absolute violation of the terms of the compromise decree referred above and against the law of pre-emption. The plaintiffs have thus made a demand openly to the knowledge of the defendants 1 to 11 and had complied with all the conditions of right to pre-emption embodied in law. The



WEB COPY

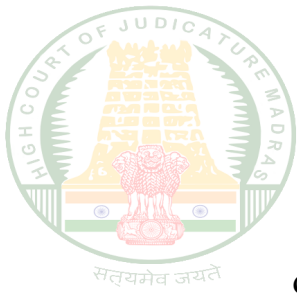


C.S.No.254 of 2014

plaintiffs have therefore been advised to file the present suit to enforce their right of pre-emption over the suit property as the defendants had failed to honour their obligations. Hence the suit.

3. The case of the 12th Defendant, in a nutshell, as set out in his written statement, is as follows:-

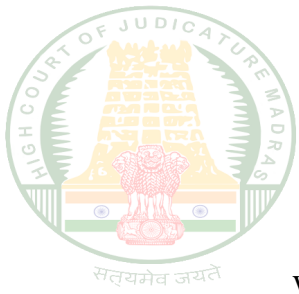
- a) All the allegations contained in the plaint are denied except those that are specifically admitted herein. The plaintiffs have no right of pre-emption and as such they are not entitled to have a decree of declaration of the right of pre-emption to buy the shares of the defendants 1 to 11 in the suit B schedule property as claimed in the above suit. The plaintiffs claimed their right as per a decree and judgement passed in earlier suit for partition in C.S No.570 of 1978 on the file of this Court between C.Mohamed Siddique and his sister Mrs.C.Safia Bee and his predeceased brother's wife C.Zuliekha Bi. The suit was decreed as per compromise arrived at between the parties to the above suit and as such the decree would bind only the parties to the suit namely C.Mohamed Siddique and his sister C.Safia Bi and it would not bind their respective legal heirs who were not parties to the suit in C.S No.570 of 1978. The 12th



C.S.No.254 of 2014

WEB COPY

defendant states that as per the records and documents furnished to him, he has learnt that after the demise of C.Mohamed Siddique on 16.05.1985, his three wives and children born through them were entitled to have their respective shares in his 2/3rd share while his sister C.Safia Bi was entitled to have 1/3rd share in all the plaint schedule properties as mentioned in C.S No.570 of 1978. The second wife of the said Mohamed Siddique namely Mrs.Sayeeda Asia Begum and her son and two daughters namely C.S.Mohamed Ismail, C.S.Kathijuthus Soghra and C.S.Ayesha Siddique filed a suit in C.S No.98 of 1991 on the file of this Court seeking for their partition of their 40/288 share in the estate of Mohamed Siddique against the other legal heirs of him and his sister C.Safia Bi. Saifa Bi during her life time, settled her undivided 1/3rd share in the plaint schedule properties mentioned in C.S No.98 of 1991 in favour of her three daughters who are the first plaintiff and the defendants 10 and 11 above named herein and her three grandsons born through her predeceased son C.Abdul Shukoor by Hiba, which was latter declared and acknowledged and which was filed in this Court to bring the beneficiaries on record as her legal representatives which

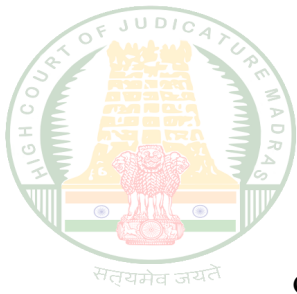


C.S.No.254 of 2014

WEB COPY

was recognized and confirmed by this Court in Application No.4558 of 2002 dated 29.11.2022 inspite of a contest for the same.

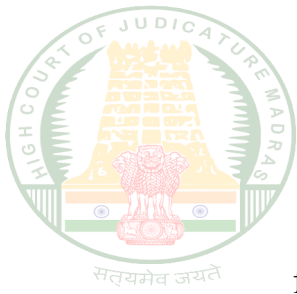
- b) The 12th defendant states that the plaint filed in the above suit in C.S No.98 of 1991 contained A schedule property having 8 items of the properties and B schedule properties are having 2 items wherein the defendants 10 and 11 and the plaintiffs are having 355 acres of land out of 1491.09 acres of land in Survey No.778 and 779 and Survey No.1/B, Aravatla Village near Pernambut of Gudiyatham Taluk of previous North Arcot District. By final decree passed in the above said suit in C.S No.98 of 1991, this Court was pleased to allot totally 355 acres to the share of C.Safia Bi holding 213 acres belonged to her as per a decree passed and she was allotted 142 acres as her share to be worked out to her branch thereby making a total of 355 acres and the same were allotted as the joint piece of land to facilitate its partition easily and it has been stated so in para 16 of the final decree of this Court. Out of 8 items of plaint A schedule property of the suit in C.S No.98 of 1991, 7 items of the properties were already sold and the plaintiffs herein were active participants in those sale transactions and they did not apply the law



WEB COPY

of pre-emption in respect of these 6 items of the properties sold out and only with regard to item No.1 of schedule A alone viz., property No.29 Stringers Street, Chennai-600 108, the above named two plaintiffs alone now claim right of pre-emption as per law bearing other three original claimants and however, they cannot claim so as they have estopped in law for doing so since they waived this right and abandoned it and acquiesced in for sale of the other properties in the estate as stated above. The law of pre-emption is not consistent with equity and good conscience. Further, it is a part of *lex loci* as there is no law enacted by the State of Tamil Nadu as it has been done in some of the Northern Indian States where the right of pre-emption is used to be exercised with all restraints. This shows that in northern part of the country, the law of pre-emption is administered as per Muslim law but so far the State of Tamil Nadu is concerned it is not at all recognized here as it creates fetters on the free exercise of right of use and enjoyment of the property as per the constitution of India.

- c) The plaintiffs had previous notice of the intending sale of the undivided shares of the defendants 1 to 11, but they did not come



WEB COPY

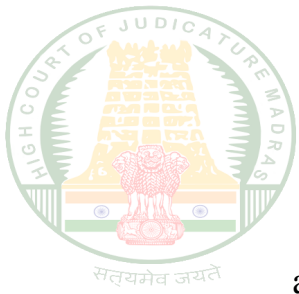
forward to avoid the sale transactions but they have chosen to do so only when the final decree proceedings were passed on 06.04.2010. By that time, the defendants 1 to 11 have already entered into agreement for sale of their undivided share of the property. This shows that they had no intention to exercise a bygone law of pre-emption as they did not do so in respect of their other properties belonging to the estate which were sold as stated above with their effect cooperation and participation. Further, the plaintiffs are not adjacent owners of the shares allotted to the defendants 1 to 11 on the southern side of the building and as such the plaintiffs are not the owners of adjoining properties (*Shafi-I-jar*) and as such the right of pre-emption if at all available shall not be extended to the extreme southern side of the properties now allotted to the defendants 1 to 11 which they have chosen to sell to the 12th defendant herein and it is due to the fact that there is no contiguity of the property as the share now allotted to the plaintiffs is on the extreme northern end of the property intervened and separated by other plots of land now sold to other defendants such as first plaintiff, D1, D2, D4, D8, D9, D10, D11 and D16 of C.S No.98 of 1991 measuring 2692 sq.ft. The



WEB COPY

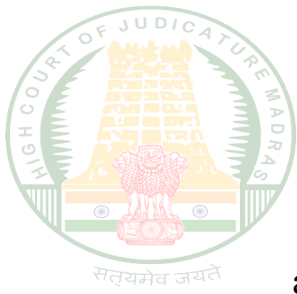
plaintiff failed to make a demand for enforcing their right of pre-emption immediately as per law when they came to know about the agreement and as such their demand is barred by limitation as the demand is not made immediately. So far Muslim Law is concerned, they shall not be in loss of time after the news of the completed sale was received by the plaintiffs. This demand (*Talab-I-Mowsibat*) should have been made to all the other sharers of the property offering to purchase their respective shares and confining it only to the defendants 10 and 11 is defective and it is not a *Talab-I-Mowsibat* as per Muslim law. This unreasonable and unnecessary delay on the part of the plaintiffs shall be concluded as an election not to pre-empt and as per Muslim law, this demand shall be made in the presence of atleast 2 witnesses and nowhere it has been stated either in the legal notice or in the plaint that such a demand was ever made by the plaintiffs in the presence of 2 witnesses as per Muslim law nor such demand was made in the premises sold to the 12th defendant herein as per Muslim Law.

- d) The 12th defendant further states that the law of pre-emption shall be applicable only to Muslims, who are governed by the Muslim law



WEB COPY

and as he is a Jain by religion, the law of pre-emption cannot be exercised against him. The right of pre-emption is a very weak form of right and the vendor and the vendee are entitled to use all lawful means to avoid the enforceability of his right which is not at all recognized by any law to that effect enacted by the State of Tamil Nadu. Further, the pre-emption is available only to the co-owner of the property and the partition suit was already passed finally and the status of being a co-owner is lost and the plaintiffs have no right whatsoever to claim the right of pre-emption. The plaintiffs tried to grab the portions of the properties sold to him by the defendants 1 to 11 at the price shown in the sale deeds while the 12th defendant has spent huge amount for getting the properties which were under the occupation of several old tenants vacated and got vacant possession thereof and in order to knock out the properties at the value as shown in the sale deeds they have tried to exercise the right of pre-emption and that too by the present only two of them while the demand was originally made by the 27th defendant and defendants 28 to 31 in the suit in C.S No.98 of 1991. It shows the plaintiffs deceit in applying the right of pre-emption even though by law they

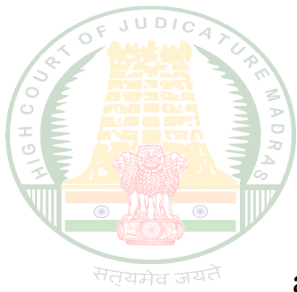


C.S.No.254 of 2014

WEB COPY

are not entitled to do so for the reasons as stated above.

e) So far Item No.1 of B schedule property of the final decree is concerned, C.Safia Bi, during her life time gifted her properties to her three daughters viz., The defendants 26, 27 and 28 and her three grandsons through her predeceased son C.Abdul Shukkoor and the 28th defendant is the 1st plaintiff herein and the grandsons are C.Abdul Aleem, who is the second plaintiff and his two younger brothers viz. C.Mohamed Imran and C.Abdul Hadi. This Hiba was confirmed and the beneficiaries of Hiba were ordered to be brought on record of C.S No.98 of 1991 as per order passed on 29.11.2002 in Application No.4558 of 2002 in the above said suit in C.S No.98 of 1991. The three daughters were allotted 2/3rd share and the grandsons were allotted remaining 1/3rd share. When this status was set at rest by all parties to the suit, the 28th defendant supported and encouraged by her husband K.Abdul Aleem and his son K.Abdul Khadir and the second plaintiff herein, C.Abdul Aleem got C.Safia Bi who was admitted in the hospital for recovery of her illness temporarily discharged from the Zubaida Hospital falsely telling the doctors to take the patient to attend a marriage and against medical

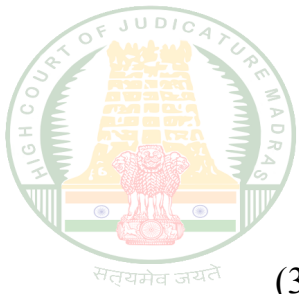


WEB COPY

advice they took her to Arcot by car and obtained her thumb impression in two deeds of gift in favour of K.Abdul Khadir only the son of D28 and the second plaintiff herein by Deeds of Settlement registered as document No.427 of 2008 and 428 of 2008 dated 10.03.2008 in respect of Forest land of the Hill mentioned in the second item of Schedule B of the final decree measuring 213 acres of land out of her total 355 acres of land and after the registration, the patient was brought and readmitted in the same Zubaida Hospital on the next day. D26 and D27 have taken criminal action against these culprits which is still pending on the file of the criminal side of this Court. There is no cause of action to the above suit. The value for the suit is purposely under valued as they are fully aware of the real value of the suit land as per the agreement of sale filed in this Court and hence the suit is liable to be dismissed in limini.

4.On the pleadings of the parties and hearing the learned counsel on either side, the following issues were framed for determination:-

- (1) Whether the plaintiffs have a right of pre-emption in the suit property as per the decree and judgment passed in the suit in C.S No.570 of 1978?
- (2) Whether the plaintiff's right to pre-emption is estopped on account of waiver, acquiescence and abandonment?



C.S.No.254 of 2014

WEB COPY

- (3) Whether the suit is barred by limitation?
- (4) Whether the suit is properly valued?
- (5) Whether the plaintiffs are entitled to the relief of mandatory injunction directing the defendants to jointly execute a sale deed in respect of the suit property in favour of the plaintiffs?
- (6) To what other reliefs, the plaintiffs are entitled?

5. Though summons were served on the defendants 1 to 9, 11, 13 to 16, they have not chosen to appear before this Court, inspite of several opportunities and hence, the defendants 13, 15 and 16 were set exparte on 06.06.2023 and the defendants 1 to 9, 11 and 14 were all set exparte on 05.02.2024. Pending the suit, the 10th defendant died and hence, his legal heirs were impleaded as defendants 13 to 16. Though the 12th defendant filed his written statement, he failed to appear before this court at the time of trial and hence, he was set exparte on 05.02.2024.

6. On the side of the Plaintiffs, the 2nd plaintiff was examined as PW1 and Ex.P1 to Ex.P21 were marked.

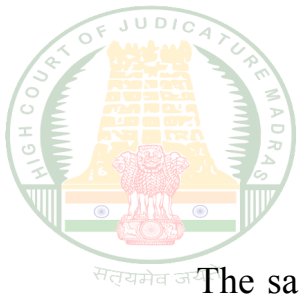
7. Heard the learned counsel for the plaintiffs and also perused the materials available on record.



WEB COPY

8. The 2nd plaintiff/PW1 has filed Proof Affidavit reiterating the plaint averments, besides marking twenty one documents, namely, Ex.P1 to Ex.P21.

9. The learned counsel for the plaintiffs contended that the suit 'A' schedule property was a subject matter of a suit filed in C.S No.570 of 1978 on the file of this Court, for partition by one C.Mohamed Siddique against his sister C.Safia Bi and his predeceased brother's wife C.Zulaikha Bi. The said suit was ended in compromise. The compromise decree in C.S No.570 of 1978 dated 30.04.1985 is marked as Ex.P1. As per clause 8 of Ex.P1 compromise decree in C.S No.570 of 1978, the plaintiffs who are the legal heirs of C.Safia Bi and Donees under the settlement executed by Safia Bee, have a right of pre-emption to purchase the shares of other legal heirs of Mohamed Siddique in the event of a sale in favour of a third party by them. The defendants 1 to 11 who are the legal heirs of Mohamed Siddique had violated the terms of the compromise decree in C.S.No.570 of 1978 (Ex.P1) by selling the suit 'B' schedule property having an extent of 4247-1/2 sq.ft. to the 12th defendant, who is the third party. To prove the same, certified copy of the sale deeds, Ex.P8 to Ex.P18 were marked.



C.S.No.254 of 2014

WEB COPY

The sale of suit 'B' schedule by the defendants 1 to 11 in favour of 12th defendant was without offering the same to the other legal heirs of Mohamed Siddique and Safia Bi. Hence the sale deeds entered into between the defendants 1 to 11 and the 12th defendant are not valid and the same are not binding on the plaintiffs. The plaintiffs, on coming to know about the above sale deeds issued a legal notice (Ex.P19) to the 12th defendant on 23.02.2011 calling upon him to convey the rights purchased by him from the defendants 1 to 11 in regard to the suit property. Further, the plaintiffs also conveyed that they agreed to the very same sale consideration as mentioned in the sale deeds executed in favour of the 12th defendant. But, the 12th defendant failed to respond to the same.

10. The learned counsel further submitted that the plaintiffs have a right of pre-emption to buy the shares of the defendants 1 to 11 in the suit property for a sum of Rs.1,40,22,400/- being the sale price reflected in the sale deeds executed by the defendants 1 to 11 in favour of 12th defendant. Based on the compromise decree dated 30.04.1985 in C.S No.570 of 1978, the defendants 1 to 11 had failed to adhere to the terms of the compromise of giving a prior notice of their intention to sell their shares and had not



WEB COPY

offered to sell it to the plaintiffs, inspite of the fact that they were put on notice regarding the plaintiffs' intention to buy and expressed through their counsel during the hearing of the final decree application in C.S No.98 of 1991. The said fact was recorded by the Hon'ble Judge in the final Decree which is marked as Ex.P4. Inspite of the plaintiffs' offer to buy, expressed the same through their legal notice dated 10.04.2010 (Ex.P5) and also effected public notice in the newspaper "Malai Malar" (Ex.P7) dated 25.05.2010, the conduct of the defendants 1 to 11 in selling their interests to the 12th defendant is in absolute violation of the terms of the compromise decree referred above and against the law of pre-emption. Thus, the plaintiffs have made a demand openly to the knowledge of the defendants 1 to 11 and had complied with all the conditions or right to pre-emption embodied in law. Further, the oral and documentary evidence let in by the plaintiffs were not controverted by the defendants. Particularly, PW1 was not cross examined on the side of the defendants. Therefore, the plaintiffs have duly proved the claim for pre-emption and the plaintiffs are entitled to enforce their right of pre-emption over the suit property as the defendants had failed to honour their obligation.



WEB COPY

11. The learned counsel for the plaintiffs in support of his contention relied on the judgments reported in i) (1954) Supreme Court cases 836 and ii) 1961 SCC Online SC 133. In para 16, 22 & 23 of the judgment reported in 1954 Supreme Court Cases 836, it was held that the right of pre-emption of Mohammedan is enforceable and it can be enforced as against the Hindu buyer. Further, in the judgment reported in 1961 SCC Online SC 133, the right of pre-emption can be exercised after the completion of registration. As per the Mohammedan law, the right of pre-emption can be exercised after execution of sale deed. In the present case, the defendants 1 to 11 had conveyed their lands in favour of the 12th defendant under registered sale deeds. Therefore, the plaintiffs have come forward with the present suit to exercise their right of pre-emption and hence, he prays to pass a judgment and decree as prayed for.

12. On perusal of the written statement, it is the contention of the 12th defendant that during pendency of the final decree proceedings, it was brought to the notice of the Hon'ble Court that the defendants 1 to 11 wanted to sell their respective share of land and superstructure to the intending purchasers who also filed their affidavit of willingness to



WEB COPY

purchase the undivided shares. At that time, the plaintiffs herein have not objected by bringing the right of pre-emption and other parties to the suit being the legal heirs of C.Mohamed Siddique and Mrs.C.Safia Bi did not support this claim of pre-emption and when the Hon'ble Court was pleased to frame and pass final decree in the above suit then only it was brought to the Hon'ble Court of their right of pre-emption to purchase the undivided shares of the defendants 1 to 11 and this fact was clearly stated so in the final decree drafted and passed by this Hon'ble Court on 06.04.2010. Further, it is pleaded that the right of pre-emption is lapse due to waiver abandonment and acquiescence in selling other items of property. Further, it is submitted that it is a part of *lex loci* as there is no law enacted by the State of Tamil Nadu as it has been done in some of the Northern Indian States where the right of pre-emption is used to be exercised with all restraints. This shows that in Northern part of the country, the law of pre-emption is administered as per Muslim law but so far the State of Tamil Nadu is concerned, it is not at all recognized.

13. In view of the above said submissions made by the learned counsel for the plaintiffs and upon perusal of the written statement filed by



WEB COPY

the 12th defendant, the right of pre-emption is only a preferential right and not an absolute right and there is no bar to the other co-sharers to transfer the property and the said right is only a weak right.

14. In the above case, the issue of exercising the preferential right to purchase the share of the other co-sharers was brought to the notice of this Hon'ble Court during the final decree proceedings itself and it has been made clear that the right of pre-emption can be exercised only it is available. In this case, the properties have already been sold and the same had not been challenged.

15. Apart from the above, the third party rights have been created and they have been put in possession of the properties. There is no law compelling the other co-sharer to sell the land. The right claimed in the above suit is only a preferential right and the same can be exercised only in the case of willingness by parties. There are other co-sharers who are not made as a party in these proceedings.



C.S.No.254 of 2014

WEB COPY

16. The right of enforcing the pre-emptive right was raised in the final decree proceedings and the same was rebutted by the defendants 26 and 27 stating that they are not willing to sell their shares. Therefore, the intention to sell to third parties already made known to the plaintiffs. The right of pre-emption is a weak and preferential one and there is no law compelling the other party to sell their land. Hence, this Court is of the view that the relief sought in the plaint cannot be granted.

17. In the result, this Civil Suit is dismissed. No costs.

09.05.2025

Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

uma

1. List of Witnesses examined on the side of the Plaintiffs:-

PW1 C.Abdul Aleem

2. List of Exhibits marked on the side of the Plaintiffs:-

Ex.P1 30.04.1985 Certified copy of the judgement in C.S No.570 of 1978

Ex.P2 17.10.2005 Certified copy of the report of the advocate commissioner filed in C.S No.98 of 1991.



C.S.No.254 of 2014

WEB COPY Ex.P3 06.04.2010 Certified copy of judgement passed in C.S No.98 of 1991

Ex.P4 06.04.2010 Certified copy of final decree passed in C.S No.98 of 1991

Ex.P5 10.04.2010 Office copy of the legal notice issued by the plaintiffs to the 10th and 11th defendants.

Ex.P6 26.04.2010 Original reply given by the defendants 10 and 11

Ex.P7 25.05.2010 Original paper publication given by the plaintiffs

Ex.P8 14.05.2010 Certified copy of sale deed executed by the 1st defendant in favour of 12th defendant.

Ex.P9 14.05.2010 Certified copy of sale deed executed by the 2nd defendant in favour of 12th defendant.

Ex.P10 14.05.2010 Certified copy of sale deed executed by the 3rd defendant in favour of 12th defendant.

Ex.P11 24.05.2010 Certified copy of sale deed executed by the 4th defendant in favour of 12th defendant.

Ex.P12 14.07.2010 Certified copy of sale deed executed by 5th defendant in favour of 12th defendant.

Ex.P13 24.05.2010 Certified copy of sale deed executed by the 6th defendant in favour of 12th defendant.

Ex.P14 14.05.2010 Certified copy of sale deed executed by the 7th defendant in favour of 12th defendant.

Ex.P15 14.07.2010 Certified copy of sale deed executed by the 8th defendant in favour of 12th defendant.



C.S.No.254 of 2014

WEB COPY

Ex.P16 14.07.2010 Certified copy of sale deed executed by the 9th defendant in favour of 12th defendant.

Ex.P17 08.07.2010 Certified copy of sale deed executed by the 10th defendant in favour of 12th defendant.

Ex.P18 08.07.2010 Certified copy of sale deed executed by the 11th defendant in favour of 12th defendant.

Ex.P19 23.02.2011 Office copy of legal notice issued by the plaintiff to the 12th defendant.

Ex.P20 ... Original acknowledgement card

Ex.P21 09.04.2013 Certified copy of sale deed executed by C.S.Umai Habiba in favour of C.Rabia Begum.

3. List of Witnesses examined on the side of the Defendants:-

Nil

4. List of Exhibits marked on the side of the Defendants:-

Nil

09.05.2025



WEB COPY



C.S.No.254 of 2014

A.A.NAKKIRAN, J.

uma

Pre-Delivery Judgement in
C.S.No.254 of 2011

09.05.2025