



C.S.No.616 of 2015

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2025

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

C.S No.616 of 2015

Rashida Sultana

.. Plaintiff

..Vs..

M.M.Rizwanullah

.. Defendant

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

a) for partition and separate possession of the 1/2 share of the plaintiff in the suit schedule property.

b) directing the defendant to furnish accounts for the revenue accrued from the suit schedule property that is tentatively fixed at Rs.1000/- per month.

c) directing the defendant to pay the further mesne profits from the date of plaint till the date of delivery of separate possession of the suit schedule property.

c) for costs.



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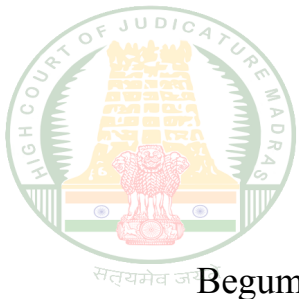
For Plaintiff : Ms.Rukmani
(For M/s.P.B.Ramanujam)
For Defendant : Mr.Lakshmi Narasimhan

J U D G M E N T

This Civil Suit has been filed for partition, rendition of accounts, mesne profits and for costs.

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

(i)The suit schedule mentioned property, all that land and building bearing No.Old No.6, New No.11, at Subedral Street, Chennai-600 005 admeasuring 1185 sq.ft. according to the documents and 1155 sq.ft. according to patta, more particularly mentioned in the schedule to the plaint, originally belonged to Muhammed Khalilullah Sahib, Son of Muhammed Owlia Sahib, Royapetta, Chennai. The said Muhammad Kahlilullah Sahib had settled the suit schedule property in favour of his daughter, Amatur Khatuna Begum, wife of Muhammed Habibur Rahman of Triplicane, Chennai by means of a registered settlement deed dated 27.03.1961 bearing document No.254 of 1961 of the Sub Registrar, Triplicane, Chennai and that the settlee, the said Amatur Rasheed Khatuna



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Begum had taken possession of the said property and the said property has been assessed to tax in her name and that it still stands in her name. The said Amatur Rasheed Khatuna Begum died on 01.10.1988 leaving behind her husband the said Muhammed Hahibur Rahman Sahib and two sons, M.M.Rizwanullah, the defendant herein and K.M.Zafarullah and that on her intestacy the said schedule mentioned property devolved on her legal heirs, the husband and two sons. The said Muhammad Habibur Rahman Sahib and his two sons had been in joint possession and enjoyment of the suit schedule property.

(ii) The said Muhammad Habibur Rahman Sahib died intestate on 20.05.2008 and that his two sons the said M.M.Rizwanullah, the defendant and the said K.M.Zafarullah, became entitled to the suit schedule property and they were in joint possession and enjoyment of the suit schedule property and had been residing therein at the ground floor. The said K.M.Zafarullah, the husband of the plaintiff had established a Clinical Laboratory at a portion of the suit schedule property and had been successfully running it and maintaining his family as well as his brother, the defendant for he has not been in any employment nor was he interested in any avocation and has been remaining so till date, and not married also.

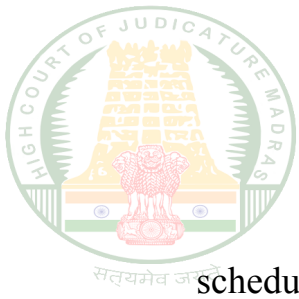


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The plaintiff's husband, the said K.M.Zafarullah was suffering from an ulcer in the tongue which later developed into a cancer and he would not continue the laboratory works and had kept all the equipments and instruments in the same portion of the ground floor of the suit schedule property. The plaintiff's husband felt that he would not recover from his illness and had declared his wish that the plaintiff should continue to stay therein and of settling his half share in the suit schedule property for her benefits and future security and enabling her peaceful possession and enjoyment of his share not be disturbed. The plaintiff's husband orally gifted (Hiba) his half share in the suit schedule property on 10.01.2009, in the presence of Shahina Hafeez, his cousin and A.Nawaz Ahamed, the brother of the plaintiff and that she has taken possession of the suit schedule property and also the clinic with its assets, and since then the plaintiff has been in joint possession and enjoyment of the suit schedule property along with the co-sharer, the defendant herein. Her husband breathed his last on 05.05.2009 at the Apollo Speciality Hospital, Mount Road, Chennai.

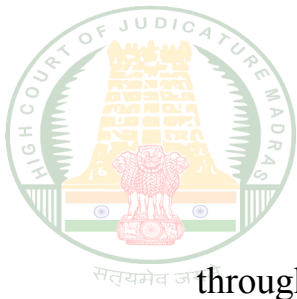
(iii)After the demise of the plaintiff's husband, his brother, the defendant continued to stay in a portion of the ground floor of the suit



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schedule property, except the laboratory and the attached residential portion as this has been in possession of the plaintiff. The first floor portion of the suit schedule property was already let out on lease as it has become the only additional income for the plaintiff's family and the defendant. The tenant of the first portion, Dr.E.M.Abdul Razack has been paying Rs.20,000/- per month as rent which has been collected by the defendant and that for a certain period since June, 2009 onwards, the defendant has regularly shared the rent with plaintiff and by the passage of time, the defendant began to withhold the entire rent except on demand made by the plaintiff and that reduced divided to Rs.5,000/- a month. She saved this monthly share of rents to discharge loan, which the tenant advanced towards medical expenses and treatment for the father-in-law of the plaintiff.

(iv)The defendant was a minor of 17 yeas old when the plaintiff got married and she treated him as her son and that he also reciprocated her love until the time when he gave up his job and started whiling away his time with his friends. The defendant has been spending a lot of money, wasting the revenues from the schedule property, as he remains unmarried and is least bothered to lead a pious life. The plaintiff made earnest efforts

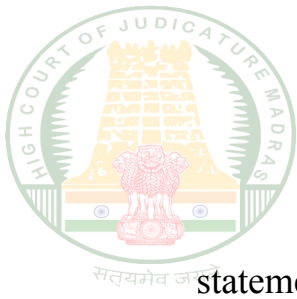


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through her brother and elder relatives for partition and separate possession of the suit schedule property as there is every possibility of the defendant being influenced or manipulated to deal with the suit schedule property detrimental to the interests and possession of the suit schedule property of the plaintiff, but the defendant though agreed to co-operate to the full and final settlement of amicable partition, evades at all point of time. She caused to issue a legal notice dated 10.04.2014 demanding the partition of the suit schedule property which he received it and sent a reply dated 15.04.2014 containing false averments. The plaintiff has therefore come forward with this suit for partition and separate possession of her 1/2 share in the suit schedule (i) item property, as well as in the (ii) item property.

v.The plaintiff's husband late K.M.Zafarullah, purchased the (ii) schedule property by means of a registered sale deed dated 16.04.1987, vide Document No.771 of 1987 of the office of Sub Registrar, Thiruvallangadu in Thiruttani Taluk of Thiruvallur District in his name as well as in the name of the defendant. The plaintiff's husband half share devolved on her on his death. Hence the suit.

3. The case of the Defendant, in a nutshell, as set out in his written



statement, is as follows:-

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i.All the allegations contained in the plaint are denied except those that are specifically admitted herein. The plaintiff cannot seek a relief of equal share in the suit schedule property. Further, assuming without admitting, if at all a widow is entitled for partition in the property of her husband, she is entitled to 1/4th share in the property divided as per Muslim Law. The relevant portion of entitlement of partition is extracted hereunder in verbatim Widow:

- (1) The widow gets 1/4 if there is no (a) child, or (b) child of son
- (2) The widow gets 1/8 if she is with (a) child, or (b) child of son
- (3) If the propositus had left more than one widow, all the widows share equally out of the 1/4 or 1/8 share as the case may be.

ii.The defendant deny the averments made in para 4 to 6. The plaintiff's husband did not reside in joint possession and enjoyment of the suit schedule property after the death of Mohamed Habibur Rahman. The defendant vehemently deny the averment that the plaintiff's husband orally gifted (HIBA) for half share in the schedule property on 10.01.2009 in the presence of Shahina Hafeez, his cousin and Nawaz Ahamed, the brother of the plaintiff. The said Shazhina Hafeez is aunt of the defendant and she was



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not aware anything about the suit schedule property and also she was not present on 10.01.2009. Further, there is no such oral gift happened on 10.01.2009 and moreover she has not taken possession of the suit schedule property. Because the plaintiff's husband namely K.M.Zafarullah was unable to talk or eat due to disease affected in his mouth. He was feed by liquid till his death. Therefore, there was no chance on 10.01.2009 that the plaintiff's husband orally gifted half share of the suit schedule property to the plaintiff. The defendant vehemently deny the averments made in para 7 to 9 of the plaint. The plaintiff has approached this Court with false averments, untrue facts and with unclean hands. The plaintiff's claim is liable to be rejected by this Court on the ground that the plaintiff has falsely averred that the plaintiff's husband orally gifted half share of the suit schedule property on 10.01.2009 to the plaintiff. Hence the suit is liable to be dismissed with exemplary costs.

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 plaintiff is entitled to partition and separate possession of 1/2 share in the suit property?



WEB COPY (2) *Whether the defendant is liable to furnish the accounts for the accrued rent from the suit property?*

(3) *Whether the defendant is liable to pay mesne profits as prayed for?*

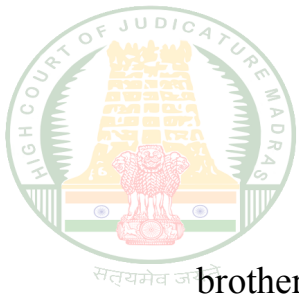
(4) *Whether the oral gift dated 10.01.2009 is true and genuine?*

(5) *To what other relief is the plaintiff entitled to, if any?*

5. On the side of the Plaintiff, the plaintiff and two other witnesses were examined as PW1 to PW3 and Ex.P1 to Ex.P8 were marked. On the side of the Defendant, the defendant examined himself as DW1. However, no document is marked.

Issue Nos.4 and 1:

6. The learned counsel for the plaintiff submitted that insofar as the item no.1 of the suit property located at Triplicane is concerned, it is originally belonged to mother-in-law of the plaintiff by name Amatur Khatuna Begum, vide Settlement Deed dated 27.03.1961 who died on 01.10.1988 leaving behind her husband, the plaintiff's father-in-law, and two sons, namely M.M. Rizwanullah, the Defendant herein and K.M. Zafarullah, the plaintiff's husband. Insofar as the Item No.2 of the suit property is concerned, located at Chengalpet District, the plaintiff's husband has purchased the said suit property jointly in his name and his



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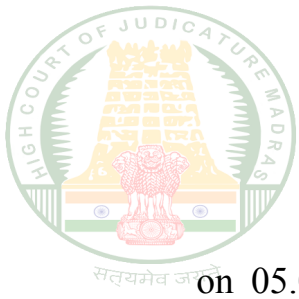
brother name.

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7.It has been further submitted that after the death of the mother-in-law of the plaintiff, the plaintiff's father-in-law, her husband and the defendant herein had been in joint possession and enjoyment of the 1st item of the suit schedule property. Further, the plaintiff's father-in-law died intestate on 20.05.2008 and consequently his two sons became entitled to the suit schedule property and they were in joint possession and enjoyment of the suit schedule property.

8. The learned counsel for the plaintiff further submitted that the plaintiff's husband was suffering from an ulcer in the tongue, which later developed into a cancer. Hence, the plaintiff's husband considering the well being and future security of his wife, by way of a Hiba, orally gifted his half share in the suit schedule property to the plaintiff on 10.01.2009, in the presence of Shahina Hafeez, who is cousin of the plaintiff's husband and A. Nawaz Ahamed, the plaintiff's brother.

9.It has been further submitted that the plaintiff's husband died



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on 05.05.2009 at the Apollo Specialty Hospital, Mount Road, Chennai.

After the death of plaintiff's husband, the plaintiff made earnest efforts through her brother and elder relatives for partition and separate possession of the suit schedule properties in Item Nos.1 and 2, as there was a risk that the defendant might be manipulated or influenced to deal with the same. Even though the Defendant agreed to cooperate to the full and final settlement of an amicable partition, he has been evading at all points in time even after serving notice. Hence, the plaintiff has filed the present suit praying the relief as sought therein.

10. The learned counsel for the defendant submitted that there was no chance for oral gift to be happened on 10.1.2009 in the presence of the Shahina hafeez and Nawaz Ahamed, since the plaintiff's husband was unable to talk or eat due to disease affected in his mouth. He was feed by liquid till his death. The plaintiff has failed to produce any medical records to show that deceased K.M.Zafarullah was able to speaking condition, despite he suffered with cancer in tongue. Those averments are created with an malafied intention to get partition of the suit schedule property from the defendant and he denied the HIBA (Oral Gift).



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11. It has been further submitted that in the evidence of P.W1 to P.W3, they have not clearly established with regard to Hiba (oral gift) granted by the plaintiff's husband by way of oral and documentary evidence. At the same time, the plaintiff failed to let in oral and documentary evidence to prove that the plaintiff was able to speak on 10.01.2009. Hence, he prays to dismiss the suit with exemplary costs.

12. On perusal of the records, it is seen that the plaintiff seeks partition and separate possession of the $\frac{1}{2}$ share in Item Nos.1 and 2 as mentioned in the plaint schedule of properties based on the Hiba (Oral gift). In this regard, P.W1 to P.W.3 were examined to prove the same. However, the plaintiff has not produced any documentary evidence to support the same. Hence, this Court is not inclined to take into consideration of Hiba(Oral Gift) given by the Plaintiff's husband without any documentary evidence. Thus, Issue No.4 is answered accordingly.

13. In the deposition of DW1 itself, he admitted that after his mother demise, his late father, his late brother and himself were all joint



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possession of the property in the item no.1. Further he also admitted that after his father demise, his brother and himself have been in joint possession of Item No.1 and Item No.2 in the suit schedule properties. Furthermore, while asking relating to the share of the plaintiff in the suit schedule properties, D.W.1 deposed that her share is $\frac{1}{4}$. However, D.W1 has denied $\frac{1}{2}$ share in the suit properties.

14.Insofar as item No.1 property is concerned located at Triplicane, the plaintiff's mother in law has the title, right and interest over the said property. Insofar as item No.2 property is concerned located at Tiruthani, it has been purchased by the plaintiff's father in law in the name of the plaintiff's husband and the defendant. The same has been admitted in the evidence of P.W.1.

15.Under the aforesaid circumstances, under Muslim Law, If a Muslim man dies leaving behind a wife but no children or grandchildren, the wife will inherit $\frac{1}{4}$ th of his property. If, however, he leaves behind a child or grandchild, the wife's share will be $\frac{1}{8}$ th. Since the plaintiff's husband died leaving behind the petitioner (wife) but no children, the



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plaintiff is entitled to partition and separate possession of 1/4th share in the suit schedule properties as per Muslim Law. Accordingly, Issue No.1 is answered.

16. Since the Plaintiff is entitled to partition and separate possession in the suit schedule properties, the defendant is liable to furnish the accounts for the accrued rent from the suit property and to pay mense profit if any. Accordingly, issue No.2 to 4 are answered.

17.In the result, this Civil Suit is partly decreed in the aforesaid terms. No costs.

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Index:Yes/No

Web:Yes/No

Speaking/Non Speaking

lbm/uma

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

PW1 Rashida Sultana

PW2 A.Navas Ahamed

PW3 Shaina Hafeez



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

- | | | |
|-------|------------|--|
| Ex.P1 | 27.03.1961 | Certified copy of the settlement deed in favour of Amatur Rashed Khatuna Begum |
| Ex.P2 | 23.01.2010 | Copy of communication from City Union Bank |
| Ex.P3 | 30.01.2013 | Original Change of name paper publications |
| Ex.P4 | 10.04.2014 | Copy of legal notice to the defendant |
| Ex.P5 | 10.04.2014 | Copy of legal notice to the tenant |
| Ex.P6 | 15.04.2014 | Copy of reply notice by the defendant |
| Ex.P7 | .. | Copy of Bank passbook of IOB, Triplicane Branch issued to the plaintiff from 08.11.2012 to 05.11.2014. |
| Ex.P8 | 16.04.1987 | Copy of sale deed by Krishna Reddy in favour of Khaleel Mohd. & others |

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

DW1 M.M.Rizwanullah

4. List of Exhibits marked on the side of the Defendant:-NIL

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A.A.NAKKIRAN, J.

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Pre-Delivery Judgement in
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