



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-09-2025

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THE HON'BLE DR.JUSTICE R.N.MANJULA

CS No. 769 of 2013

Mr.T.Sivaprakasam
S/o.T.L.Thiagarajan, No.12, Plot No.154, 7th Main
Road, Thanikachalam Nagar, Ponniammanmedu,
Chennai-600 110.

..Plaintiff(s)

Vs

1. Mr.T.Viswesiah
S/o.T.L.Thiagarajan, Plot No.7, Old No.4, New
No.7, Soliappan Street, Ullagaram, Chennai-600
091.
2. MR.T.SUBRAMANIAM (Deceased)
S/O.T.L.THAGARAJAN, OLD NO.16, NEW
NO.14, GOVINDARAJULU NAIDU STREET,
AGARAM, PERAMBUR, CHENNAI-600 082.
(Amended as per order dated 16.02.2022 in
A.No.538/2022 and time extended as per order
dated 16.03.2022 in A.No.1043/2022 in
CS.No.769/2013).

..Defendant(s)

PRAYER : Plaint filed under Order IV of Original Side Rules read with Order VII Rule 1 of C.P.C., praying for the following judgment and decree as against the defendants;

(a) for partition and delivery of possession of plaintiffs 1/2 share in the schedule property.

(b) for an account of the income of the suit property by the defendants till date of delivery of possession.



(c) for the cost of the suit.

(Prayer amended as per order dated 16.02.2022 in A.No.538 of 2022 and time extended as per order dated 16.03.2022 in A.No.1043 of 2022 in C.S.No.769 of 2013)

For Plaintiff(s): M/s.N.Kishore Kumar

For Defendant(s): M/s.V.Baskaran

JUDGMENT

The suit has been filed for seeking partition and delivery of possession of plaintiffs 1/2 share in the schedule property and for an account of the income of the suit property by the defendants till date of delivery of possession.

2. Heard N.Kishore Kumar, learned counsel for the plaintiff and Mr.V.Baskaran, learned counsel for the defendant and perused the materials available on record.

3. The plaint in brief:

The suit property belonged to the mother of the plaintiff, the first defendant and the deceased second defendant. The parents of the plaintiff had two more children who died without any issues. During the pendency of the suit, the second defendant also died without leaving any legal heirs. Originally, the plaintiff has filed a suit claiming 1/3rd share in the suit property for himself



and the defendants 1 and 2, as the legal heirs of his deceased mother. As the second defendant died during the pendency of the suit without any issues, the plaintiff has amended the suit by seeking 1/2 share in the suit property.

4. The written statement filed by the first defendant in brief:

The first defendant did not dispute the title of his mother in respect of the suit property. The property was given to his mother as Shridhana and hence, it is ancestral in nature and the legal heirs of the first defendant are also entitled to the share in the suit property. By claiming so, the first defendant has stated that the plaintiff is entitled to only 1/5 share. As the legal heirs of the first defendant have not been arrayed as parties, the suit is bad for non-joinder of necessary parties. Hence, the suit should be dismissed.

5. On the basis of the above pleading, this Court has framed the following issues for consideration:

"1. Whether the plaintiff is entitled to get the share as claimed for?"

2. Whether the defendants are entitled to the property in view of the Will executed by one Kannammal?"

3. Whether the plaintiff is in possession of the suit property?"

4. What other reliefs the plaintiff is entitled to?"



6. So far as the second issue is concerned, that need not be considered because the Testamentary Original Suit filed by the second defendant on the basis of the alleged Will has been dismissed on 17.12.2021 in TOS.NO.15 of 2010. The second defendant died even before disposal of the above said Testamentary Original Suit.

7. During the course of trial, on the side of the plaintiff, P.W.1 was examined and Exhibits P1 to P3 were marked. On the side of the defendants, the first defendant was examined as D.W.1 and no documents have been marked.

Discussion :

8. The fact that the property belonged to the mother of the plaintiff is not in dispute. Though the second defendant during his life time has filed a suit in TOS.No.15 of 2010 by claiming absolute right in respect of the entire suit property on the strength of the alleged Will executed by his mother, the same got dismissed on 17.12.2021. So, the claim of the second defendant about the existence of the Will in his favour has been decided by the Court and it had attained finality. So, this would only show that the allegations as to the existence of the Will is not true or not proved. However, the first defendant has



made a claim stating that the property is a joint family property and the family constituted his mother and the children and hence, it is ancestral in nature. He further claimed that his children are also entitled to the share in the suit property. Hence, the plaintiff is entitled to only 1/5th share. Therefore, according to the first defendant, the suit is bad for non-joinder of necessary parties as his children were not added as parties.

9. On perusal of Ex.P1 settlement deed dated 29.06.1934, in favour of the plaintiff's mother, it is seen that the above property has been settled in her favour by her father. The recitals of the settlement deed would show that the said property has been acquired by the father of the plaintiff's mother by himself through a registered sale deed dated 17.12.1928. When the document itself shows that the father of the plaintiff's mother has acquired the property by himself, the first defendant claims that the property is ancestral in nature. During the cross examination of D.W.1, he has admitted the fact that the property has been gifted by his paternal grandfather to his mother. But Ex.P1 reveals that it was actually gifted by his maternal grandfather to his mother and not by paternal grandfather.



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10. The first defendant has further stated that he is making a claim of ancestral nature of the property only for the first time. It appears from his evidence that the first defendant has got the misconception about the antecedent of the property and he imagined that it was the property belonged to his paternal grandfather, but, in reality, the above property belonged to his maternal grandfather by way of purchase. In fact, he settled it in favour of his daughter who is the mother of the parties.

11. Even though the first defendant claimed that the property was ancestral in nature and it was a joint family property, the said fact has not been proved. On the other hand, both the documentary and oral evidence would only confirm that the property belonged to the plaintiff's maternal grandfather as self acquired property and there is no ancestral nature attached to the same. It is needless to state that as per Section 14 of the Hindu Succession Act, 1956, any property acquired by a female Hindu whether prior or after her marriage as Shridhana should be considered as her absolute property.

12. In this regard, it is appropriate to rely on the judgment of the Hon'ble Supreme Court held in the case of *Mulakala Malleshwara Rao and Another Vs. State of Telangana and Another*, reported in 2024 0 Supreme(SC) 712. It



is appropriate to extract the paragraph Nos.7 and 8 of the above judgment as

under:

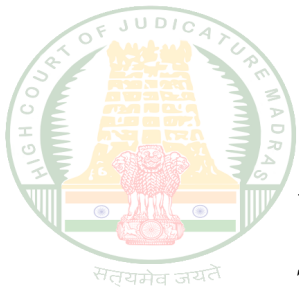
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"7. As evidenced from the above, the jurisprudence as has been developed by this Court is unequivocal with respect to the singular right of the female (wife or former wife) as the case may be, being the sole owner of 'stridhan'. It has been held that a husband has no right, and it has to then be necessarily concluded that a father too, has no right when the daughter is alive, well, and entirely capable of making decisions such as pursuing the cause of the recovery of her 'stridhan'.

8. We also notice [Section 14](#) of the Hindu Succession Act, 1956 which talks about a Hindu female being the absolute owner of property. It reads:

"14. Property of a female Hindu to be her absolute property.— (1) Any property possessed by a female Hindu, whether acquired before or after the commencement of this Act, shall be held by her as full owner thereof and not as a limited owner.

Explanation.—In this sub-section, "property" includes both movable and immovable property acquired by a female Hindu by inheritance or devise, or at a partition, or in lieu of maintenance or arrears of maintenance, or by gift from any person, whether a relative or not, before, at or after her marriage, or by her own skill or exertion, or by purchase or by prescription, or in any other manner



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whatsoever, and also any such property held by her as stridhana immediately before the commencement of this

13. Undoubtedly, the suit property has been acquired by the plaintiff's mother who is a female Hindu by virtue of a gift given by her father. In whatever way the source of right of the plaintiff's mother is seen, it can only be her absolute property. Even if the property is considered as Shridhana, she only can become an absolute owner and no one else. Since the plaintiff's mother is proved to be an absolute owner of the suit property, the first defendant cannot claim that it was a joint family property and that his children should also be impleaded as parties. Hence, the suit is not affected by non-joinder of necessary parties as pleaded by the first defendant.

14. As the plaintiff and the defendants 1 and 2 were the legal heirs of the deceased mother, each of them are entitled to 1/3 share on the death of their mother. It is also pertinent to mention that the plaintiff's mother has not left any Will and she only died intestate. Even the claim of the second defendant that the mother of the plaintiff had executed a Will is proved and the suit filed in this regard in TOS.No.15 of 2010 has also been dismissed. As one of the legal heirs viz., the second defendant also died without leaving any issues, the shares



of the plaintiff and the first defendant would get enhanced to 1/2 share from 1/3 share. Hence, the plaintiff is entitled to 1/2 share in the suit property and thus,

the issues 1 and 2 are answered accordingly.

15. So far as the issue relating to the possession is concerned, the first defendant himself has deposed in his cross examination that the suit property has been commonly possessed by himself and his brother, who is the plaintiff herein. Hence, the third issue with regard to possession is also answered that the parties are in joint possession.

16. As the plaintiff has proved his entitlement for 1/2 share, the preliminary decree can be passed by the determining the share of the plaintiff as 1/2 share. Thus, the issue No.4 is answered.

17. In the result, this Civil Suit is decreed and preliminary decree is passed by fixing the share of the plaintiff as 1/2 in the suit property. No costs.

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

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DR.R.N.MANJULA, J.

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To

1. Mr.T.Viswesiah

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