



A.S.No.399 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated 18.02.2025

CORAM:

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

A.S.No.399 of 2024
and CMP.No.11952 of 2024

1.M.Anguraj
2.Mahalakshmi
3.M.Dhanalakshmi

... Appellants

Versus

1.B.V.A.Sekar
2.B.V.A.Ganesh

... Respondents

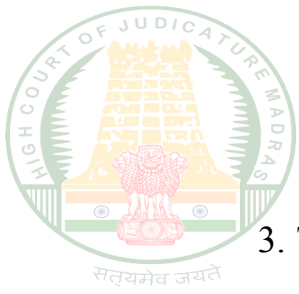
Prayer: Appeal filed under Section 96 of Code of Civil Procedure, to set aside the judgment and decree dated 03.11.2024 made in O.S.No.7577 of 2019 on the file of XVIII Additional City Civil Court, Chennai

For Appellants : Mr.V.Ramesh
for Mr.R.Ashwanth
For Respondents : Mr.S.K.Rahul Vivek for R1
No appearance for R2

JUDGMENT

Challenging the preliminary decree declaring $\frac{1}{2}$ share of the property in favor of the plaintiff, the present appeal has been filed.

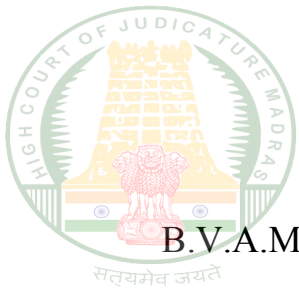
2. The parties are arrayed to as per their own ranking before the Trial Court.



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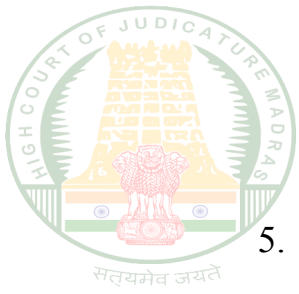
3. The first defendant is the nephew of the plaintiff, the second defendant is the niece, third defendant is the sister in law and the fourth defendant is the brother of the plaintiff. It is the case of the plaintiff that the property originally belonged to one Dhanabhagam and her sister Mylathal by virtue of sale deed dated 30.01.1981. The said Mylathal released her half share in favour of Dhanabhagam vide release deed Doc.No.756/2005, hence, Dhanabhagam has become the absolute owner of the property. The said Dhanbhagam settled portion of the property measuring to an extent 530 sq.ft., of land together with building in favour of the plaintiff's brother B.V.A.Ganesh/fourth defendant. On the same day, she has settled an extent of 1060 sq.ft., in favour of plaintiff and plaintiff's brother B.V.A.Manohar. Ever since the date of settlement, the plaintiff and B.V.A.Manohar have become absolute owner of the property settled in their favour. B.V.A.Manohar was residing in the first floor and the plaintiff was residing in the ground floor. A portion of the schedule property was let out, and rental income was shared between plaintiff and his brother. Since the building is in a dilapidated condition more than 100 years old. During August 2007, plaintiff vacated the ground floor portion and let out the same on rent and the brother agreed to fix a nominal rent for the first floor which was in occupation of



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B.V.A.Manohar and share the rents amongst them equally. Since it was becoming very difficult to maintain the suit property, the brothers decided to demolish the existing buildings over the suit property and construct new ones in their respective portions after effecting partition of land in the suit property

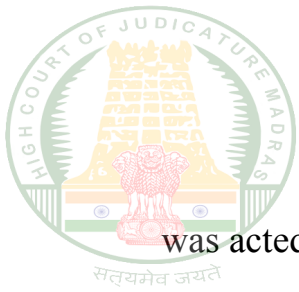
4. B.V.A.Manohar died intestate at Chennai on 11.12.2013 leaving behind the defendants are his class-I legal heirs who have succeeded to his estate. The 1st defendant ever since from 01.07.2016 stopped paying the plaintiff's share of rent for the property in occupation as other tenants in the property vacated the portion. Plaintiff approached 1st defendant and requested to vacate the portion of the property to demolish the existing building and to construct new one, all attempts made by him and other family members to amicably settle the dispute has miserably failed. During the last attempt plaintiff on 06.08.2018 to settle the dispute amicably ended in an altercation in which 1st defendant and his henchmen threatened the plaintiff and his son of dire consequences if they enter the property once again though the plaintiff is still in first floor of suit property. Hence, filed the suit for partition.



5. It is the stand of the defendants in the written statement that the actual extent of property is about 1597 sq.ft., not 1590 sq.ft. According to them, the plaintiff is not occupation for more than 8 to 9 years and admitting that Dhanabagiam had settled an extent of 1060 sq.ft., of land together with building were jointly in favour of the plaintiff and his brother B.V.A.Manohar and remaining 530 sq.ft., has been settled in favour of the fourth defendant, it is the contention of the defendants that B.V.A.Ganesh is in occupation of more extent than that was allotted and the property is not divisible. Hence, sought for dismissal of the suit.

6. Based on the above pleadings, the Trial Court framed the following issues:

- 1) Whether the plaintiff is entitled to the relief of partition and separate possession of $\frac{1}{2}$ share in the suit property as prayed for?
2. Whether Tmt.Dhanabhagiam, W/o.Arumugham Chettiar had settled 530 sq.ft. out of 1597 sq.ft. of the suit property in favour of the brother of plaintiff namely B.V.A.Ganesh on 23.11.2005 and had settled 1060 sq.ft. in favour of the 2nd son and 4th son namely B.V.A.Manohar and B.V.A.Sekar on 23.11.2005 and the same



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was acted upon?

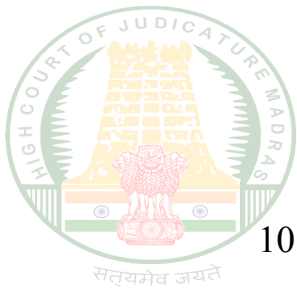
3. Whether the suit is bad for non-jonder of necessary parties?

4. To what other reliefs is the plaintiff entitled to?

7. On the side of the plaintiff, plaintiff has been examined as PW1 and has marked Ex.A1 to Ex.A8 and during the cross examination Ex.B1 to Ex.B3 were marked. On the side of the defendants, 1st defendant has been examined as DW1 and has marked Ex.B4 to Ex.B8.

8. Considering the oral and documentary evidences, the Trial Court has passed the preliminary decree. Challenging the preliminary decree, the present appeal has been filed.

9. The only contention raised by the learned counsel for the appellants is that the property is not divisible and further, the plaintiff is not in possession of the property and the actual extent was 1597 sq.ft., and not 1590 sq.ft.,. Hence, assails the judgment of the Trial Court.



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10. The learned counsel for the respondents submitted that the Trial Court based on the oral and documentary evidences has rightly passed the preliminary decree which does not require interference by this Court. Hence, seeks for dismissal of this appeal.

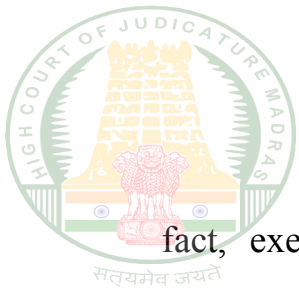
11. In light of the above submissions and pleadings, now the points arise for consideration are as follows:

- i) Whether the decree and judgment of the Trial Court require any interference by this Court?
- ii) Whether the parties are entitled to shares as declared by the Trial Court?

12. Heard both sides and perused the materials placed on record.

Points (i) and (ii)

13. On perusal of the pleadings and submissions of both sides, it is not in dispute that an extent of 1060 sq.ft., of land together with building were jointly settled in favour of the plaintiff and his brother B.V.A.Manohar and remaining 530 sq.ft., has been settled in favour of the fourth defendant. Settlement Deeds, in



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fact, executed by mother of the plaintiff and fourth defendant. The settlee

WEB COPY B.V.A.Manohar died intestate on 11.12.2013. The other defendants are none other than the legal heirs of one of the settlee namely Mr.B.V.A.Manohar. Therefore, the very documents, Exs.A3 and A4 makes it clear that the mother of the plaintiff as well as the fourth defendant had settled the property vide two documents in favour of her sons. These facts are not disputed. Therefore, once the property has been equally settled as per the settlement deed executed by the mother, the plaintiff is certainly entitled to equal shares.

14. The only contention of the defendant is that there is some difference in the sq.ft., and the property is not divisible, hence, the suit is not maintainable, such contention, in view of this Court has no legs to stand in the eye of law. Whether the property is divisible or not can be seen only in the final decree proceedings. As the rights of the property is not disputed and no contra evidence and pleadings has established the factum of ouster, it has to be held that plaintiff is certainly entitled to preliminary decree.



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15. Accordingly, I do not find any merits in this appeal and this appeal suit stands dismissed. No costs. Consequently, connected miscellaneous petition stands closed.

18.02.2025

Index : Yes / No
Speaking/non speaking order
dhk

To,

XVIII Additional Judge
XVIII Additional City Civil Court, Chennai

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