



C.S.No.214 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 18.09.2025

CORAM

THE HONOURABLE **MR.JUSTICE P.DHANABAL**

C.S.No.214 of 2024

Mr.G.Rajasekar

... Plaintiff

Vs.

1.Mr.G.Parthiban

2.Mrs.S.Malarvizhi

3.Ms.S.Kaviya

... Defendants

Prayer: The Civil Suit has been filed under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of C.P.C., 1908 praying to pass a judgment and decree, jointly and severally against the defendants:-

(a) for passing a preliminary decree declaring the plaintiff's 1/3rd over the schedule mentioned property;

(b) for passing a Final decree for the allotted share accordingly by appointing an Advocate Commissioner to divide the share of the plaintiff in the suit properties by metes and bounds according to value, convenience of enjoyment etc.;

(c) directing the first defendant to pay the cost of this suit.



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For Plaintiff : M/s.J.V.Sakthi Balakrishnan

For Defendants : D1 – Set Exparte

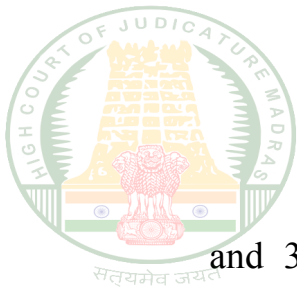
Mr.P.K.Ganesh
for D2 and D3

JUDGMENT

The suit is filed by the plaintiff under Order IV Rule 1 of the Original Side Rules read with Order VII Rule 1 of the Civil Procedure Code, 1908, for the relief of passing a preliminary decree declaring the plaintiff's 1/3 share over the schedule mentioned property and to pass a final decree.

2. The gist of the case of the plaintiff is as follows:

(a) The plaintiff, the first defendant, and one Mr.G.Suresh are the sons of the deceased Mr.S.Ganapathy and Mrs.Chandra Bai. Originally the property mentioned in the schedule belonged to Mrs.Chandra Bai and she died on 19.01.2020, leaving behind the plaintiff and the 1st defendant as her legal heirs. The husband of Mrs.Chandra Bai predeceased her, and one of her sons, namely Mr.G.Suresh, died on 11.08.2022, leaving behind the 2nd and 3rd defendant as his legal heirs. Therefore, the plaintiff and the 1st defendant are each entitled to a 1/3 share of the property. The defendants 2



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and 3 are jointly entitled to a 1/3 share of the property. The plaintiff demanded partition over the property of his 1/3rd share, but the defendants have not been amenable to amicable partition. Therefore, the plaintiff, one of the sons of the deceased Mrs.Chandra Bai, filed the present suit.

3. The 1st defendant was set *ex parte*.

4. The case of the 2nd and 3rd defendant is as follows:

(a) The father of the plaintiff, the 1st defendant, and one Mr.G. Suresh (deceased)/ the husband of the 2nd defendant and father of the 3rd defendant, namely Mr.Ganapathy, died on 16.07.2019, leaving behind his wife Mrs.Chandra Bai, the plaintiff herein, the 1st defendant and the 2nd defendant's husband, namely Mr.G.Suresh as legal heirs. The 2nd and 3rd defendants thereby admitted the relationship between the parties and the nature of the property.

(b) The 2nd defendant's husband viz. Mr.G.Suresh had altered the building as per his own funds when the 2nd defendant's father-in-law was



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alive. Till the month of February 2022, the rental amount has been equally divided by the 2nd defendant's husband, the plaintiff, and the 1st defendant.

The plaintiff is not residing in the scheduled property, and he leased out the property to a lessee. The value of the property has not been properly mentioned, and at present, the partition is not required and there is no cause of action for this suit. Therefore, the suit is liable to be dismissed.

5. Based on the above-said pleadings, upon hearing both sides and perusing the records, this Court framed following issues:

“1. Whether the plaintiff is entitled for 1/3rd share of the suit scheduled property?

2. Whether the suit schedule property is liable to be partition and if so what are the respective shares of the parties to the suit?

3. Any other relief the parties are entitled to?

6. In order to prove the case, on the side of the plaintiff, he examined P.W.1 and marked Exs.P1 to P12. On the side of the defendants, no oral or documentary evidence was adduced.



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7. This Court heard both sides and perused the records.

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8. Mr.J.V.Sakthi Balakrishnan, the learned counsel appearing for the plaintiff, would submit that originally the property belonged to the mother of the plaintiff, the 1st defendant and one Mr.G.Suresh/another son of the deceased mother, namely Mrs.Chandra Bai. Mrs. Chandra Bai died intestate, leaving behind the plaintiff and the defendants as her legal heirs to succeed her estate. The father of the plaintiff and the 1st defendant predeceased their mother. One of the sons, namely Mr.G.Suresh, also died on 11.08.2022. The 2nd and 3rd defendants are the legal heirs of the deceased Mr.G.Suresh. Therefore, the plaintiff and the 1st defendant each are entitled to 1/3 share over the property and defendants 2 and 3 together are entitled to 1/3 share over the property. When the plaintiff demanded partition over the property, the defendants refused for amicable partition. Therefore, the plaintiff filed this suit.

9. In order to prove the case of the plaintiff, he examined P.W.1 and marked Exs.P1 to P12 and the defendants have not denied the relationship



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and the nature of the property. Therefore, the plaintiff has proved his claim, and in order to rebut the plaintiff's side evidence, no contra evidence was adduced on the defendants side. Therefore, he proved the case through sufficient evidence, and the suit has to be decreed.

10. Mr.P.K.Ganesh, the learned counsel appearing for the 2nd and 3rd defendants, would submit that they have not denied the quantum of the share. However, the deceased Mr.G.Suresh, husband of the second defendant and father of the third defendant developed the property on his own funds and they disputed the allotment of shares. Moreover, at present, no partition is required as the plaintiff is not residing in the property and he leased out to tenants.

11. Issue Nos. 1 and 2

“1. Whether the plaintiff is entitled for 1/3rd share of the suit scheduled property?

2. Whether the suit schedule property is liable to be partitioned and if so what are the respective shares of the parties to the suit?



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(a) The suit is filed by the plaintiff for the partition over the property.

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According to the plaintiff, the scheduled property belonged to his mother and she died intestate, leaving behind the plaintiff, the 1st defendant and another son viz. Mr.G.Suresh (deceased) as her legal heirs to succeed her estate. The father of the plaintiff, namely Mr.S.Ganapathy, also predeceased the mother of the plaintiff. Mr.G.Suresh, one of the sons of Mrs. Chandra Bai, who also died on 11.08.2022. The defendants 2 and 3 are the legal heirs of the deceased Mr.G.Suresh. There is no dispute in respect of the relationship between the parties and the nature of the property. Since the 2nd and 3rd defendants have not denied entitlement of the shares, the plaintiff is entitled to a share of 1/3 over the property, and the 1st defendant is entitled to 1/3 share of the property. Defendants 2 and 3 are jointly entitled to 1/3 share of the property. Since the 2nd and 3rd defendants have not disputed the relationship and the quantum of share, the plaintiff is entitled to a share of 1/3 over the property. The plaintiff also examined himself as P.W.1 and marked 12 documents as Exhibits P1 to P12.

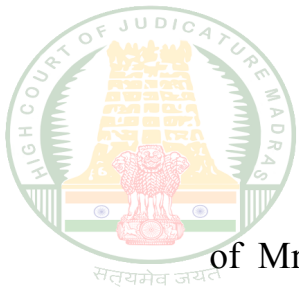


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(b) On a perusal of the evidence adduced by P.W.1 and the documents marked in Exhibits P1 to P12, it clearly shows that the property belongs to the mother of the plaintiff, the 1st defendant and the mother-in-law of the 2nd defendant, and the grandmother of the 3rd defendant. The plaintiff has not produced the original documents. However, the defendants have not denied the title of the property.

(c) As stated above, 12 documents were marked on the side of the plaintiff. Ex.P1 is the photocopy of the Sale Deed registered as Document No.742 of 1935 dated 15.02.1935. Ex.P2 is the photocopy of the Release Deed executed by Ganesan, Chandralekha and Valliammal in favour of Mrs.Chandrabai registered as Document No.1338 of 1980 dated 14.07.1980. Ex.P3 is the photocopy of the TSLR in the name of Chandrabai dated 21.10.1994. Ex.P4 is the online copy of the death certificate of Mr.S.Ganapathy. Ex.P5 is the online copy of the legal heir certificate of Mr.S.Ganapathy. Ex.P6 is the online copy of the death certificate of the Mrs.Chandrabai. Ex.P7 is the online copy of the legal heir certificate of the deceased Mrs.Chandrabai. Ex.P8 is the online copy of the death certificate



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of Mr.G.Suresh son of Mrs.Chandrabai. Ex.P9 is the online copy of the legal heir certificate of the deceased Mr.G.Suresh. Ex.P10 is the photocopy of the legal notice dated 15.06.2022 issued by one Mr.G.Parthiban/1st defendant to Mr.G.Rajsekar/plaintiff and Mr.G.Suresh/deceased/one of the sons of Mrs.Chandrabai. Ex.P11 is a true copy of the reply legal notice dated 02.07.2022 and Ex.P12 is the e-mail copy of the proposals for settlement exchanged between the parties dated 03.08.2022.

(d) On a careful perusal of the above-said oral and documentary evidences, they revealed that the property belongs to one Mrs.Chandra Bai, the mother of the plaintiff and the 1st defendant. Therefore, the plaintiff has proved his claim, and moreover, there is no contra evidence adduced by the defendants to rebut the evidence of the plaintiff. Therefore, the evidence adduced by the plaintiff is acceptable. In view of the same, this Court is of the opinion that the plaintiff has proved his claim and he is entitled to preliminary decree for partition of his 1/3rd share over the property. Thus, Issue Nos.1 and 2 are answered in favour of the plaintiff.



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12. Issue No. 3.

3. Any other relief the parties are entitled to?

In view of the discussion made in Issue Nos.1 and 2, the plaintiff is entitled to a partition of his 1/3rd share over the property.

13. In the result, this suit is decreed and the plaintiff is entitled to 1/3 share over the suit property. The suit property is ordered to be divided into three shares and allot on such share to the plaintiff. To that effect, the Preliminary Decree is passed. Considering the nature of the suit and relationship of the parties, there is no order as to costs. The parties shall workout their right in the final decree proceedings for division of their shares.

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Index : Yes / No

Neutral Citation: Yes/No



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P.DHANABAL,J.

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