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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-01-2025

CORAM

**THE HONOURABLE DR JUSTICE G. JAYACHANDRAN**

**A NO. 4747 OF 2024, A NO. 4746 OF 2024**

**in**

**CS NO. 96 of 2024**

S.James Fredrick  
Maturhai Apt. 5/42,  
3rd Floor 13th avenue,  
Harrington road, Chetpet - 600 031.

Applicant(s)

Vs

Anand Fredrick and 2 others  
Maturhai Apt. 5/42,  
3rd Floor 13th avenue,  
Harrington road, Chetpet - 600 031. and 2 Others

Respondent(s)

**For Applicant(s):**

M/s.Abhinav Parthasarathy  
D.G.Hariprasath  
A.Syed Anwar

**For Respondent(s):**

Mr.C.Prasanan for  
Mr.B.Manimaran

**ORDER**

The suit for partition was filed by the husband on dual grounds: first, that the first item of the property was purchased by him in the name of his wife, second, that there was a default in determining entitlement to a share of the property by the legal heirs of the deceased wife.



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2. The claim is strongly opposed by one of the sons of the deceased, who claims his right over the property through a *Will* allegedly executed in his favour by the wife of the applicant. The issue centers around the fact that the plaintiff separated from the deceased wife in the year 1986, after which she also purchased some properties. Whereas, the case of the plaintiff is that the first item of the property was purchased in the year 1975, from the income derived from all other properties. He claims to have contributed to the purchase of the property. All details of the assets left by the deceased are provided and it is mentioned that three more properties have now been included in the schedule, requiring necessary amendments.

3. These applications are strongly opposed by the son, Arun Rajkumar Fredrick, who has filed a common counter, pointing out that the applicant/plaintiff's contention regarding the amendment sought by including three more properties under schedule A is unfounded. He asserts that those properties were acquired admittedly by the deceased wife of the plaintiff after the plaintiff had deserted her and started a family with another woman. Furthermore, the right to claim a share in her property is denied, as the plaintiff was already estranged from her.



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4. In light of several litigations regarding the property, it is evident that the plaintiff has been stripped of any right to claim over the estranged wife's properties. The claim is alleged to be made with malafide intention and without any basis, including the assertion that he contributed money for the purchase of Items 2 and 3 as morefully described.

5. After hearing the counsels on both sides, this Court narrowed down the issue to the fact that, in a partition suit, a person entitled to a share in the property of the deceased mother, may claim their right in different ways. However, at the end of the day, their right must be ascertained in accordance with law of inheritance governing the parties. The source of funds used to purchase those properties must be investigated along with the documents, rights of restriction, and any benami transactions.

6. It is noted that the plaintiff, admittedly, was unaware of the properties purchased by his wife after their separation. However, as a legal heir of the deceased, he has his own reasons to claim a share unless evidence proves otherwise. These facts need to be tested during trial. Therefore, without prejudice to the rights and claims over the properties sought is allowed. The



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**DR.G.JAYACHANDRAN, J.**

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parties must establish their rights and share through adducing evidence, and the matter will be decided after recording the evidence.

7. Accordingly, these applications are allowed on the above terms.

8. Necessary amendment shall be carried out within a period of two weeks along with the amended copy. The defendants are permitted to file additional written statements, if any.

9. It is to be noted that, after the discloser of the assets held by the deceased wife, the plaintiff has omitted one property, namely the property at Elagiri, measuring 50 cents. This omission cannot be overlooked in a later stage of the case, as this Court is of the view that it is a conscious omission by the plaintiff.

**10.01.2025**

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