



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	17.11.2025
Pronounced on	03.12.2025

CORAM

THE HON'BLE DR.JUSTICE R.N.MANJULA**CS No. 869 of 2001**

J.Thomas Jayaprabakaran

S/o.Late Mr.R.Jothimuthu, C/o.Mr.Devadas Baskar,
67, Bhagavathiamman Street, Kolatur, Chennai-600
099.

..plaintiff(s)

Vs

1. Mrs. R.Lalithambal

W/o. J.Thomas Jayaprabakaran, 5, Puliyur Main
Road, Trustpuram, Kodambakkam, Chennai-600
034.

2. AZEEZULLAH

No.29, Thiruvalluvarpuram, Second Street,
Choolaimedu, Chennai-600 094.

3. Mrs. Nabeesath Thaheera

W/o.Azeezullah, No.4/25, Sowrastra Nagar,
Second Street, Choolaimedu, Chennai-600 094,
(3rd Defendant is impleaded as Defendant in
O.A.5737/01 Order Dt, 19.12.2001)

..Defendant(s)



Prayer : Complaint filed under Order VII Rule 1 C.P.C., r/w. Order IV Rule 1 of Original Side Rules, to pass a preliminary decree in favour of the plaintiff against the defendants:

(a) For partition of the scheduled properties allotting $\frac{1}{2}$ share to the plaintiff;

(b) For appointment of Advocate Commissioner to effect the partition by metes and bounds;

(c) By way of final decree order for possession of $\frac{1}{2}$ share of the schedule properties to the plaintiff.

For plaintiff(s): M/s.R.Balachanderan

For Defendant(s): D1, D2 & D3 - Set Ex-parte

JUDGMENT

This Civil Suit has been filed seeking partition of the scheduled properties allotting half share to the plaintiff.

2. The short facts pleaded in the plaint are as follows:

The plaintiff and the first defendant fell in love and got married on 27.03.1978 at C.S.I. Church, Ramanathapuram, according to Christian rites. The first defendant joined the plaintiff without bringing any property or valuables.



At the time of marriage, the plaintiff was a Junior Assistant in the Office of the Sub-Employment Officer, Mandapam, Ramanad District, and the first defendant was a Junior Assistant at the Government Hospital, Chennai. The marriage was consummated, but no child was born. The plaintiff was later selected through the Banking Service Recruitment Board for the post of Clerk-cum-Typist and joined the Central Office of Indian Bank, Chennai, on 03.06.1981. The plaintiff guided the first defendant to appear for the Banking Service Recruitment Board examination for Clerk-cum-Typist and she succeeded and was posted in the Head Office of Indian Bank at Chennai in April 1984. Thereafter, the couple lived together in a rented house at Door No. 24, Akbarabad, Second Street, Kodambakkam, Chennai-600 024.

2.1. The plaintiff then obtained a house loan of Rs. 75,000/- from his Bank in September 1985. Using that loan and his savings, a portion of the house at Door No. 24, Akbarabad, Second Street, Kodambakkam, Chennai-600 024, was purchased in the name of the first defendant on 03.10.1985. He later obtained an additional loan of Rs. 34,200/- in February 1987 to improve the



building. The plaintiff and the first defendant also spent about Rs. 70,000/- from their own earnings for further improvements. Later, they decided to sell the said house in order to obtain a larger accommodation in a better locality. Accordingly, they sold the house at Door No. 24, Akbarabad, Second Street, Kodambakkam, Chennai-600 024, during May 1991 for Rs. 4,00,000/-. Out of the sale proceeds, the outstanding Bank loan was cleared. With the remaining sale amount, they decided to purchase a vacant house site measuring 1650 sq. ft. at Major Trustpuram, Kodambakkam, from one Mr. K.M. Sambandan and on 27.03.1991, they jointly entered into an agreement to purchase a land for Rs. 3,35,000/-, paying Rs. 1,10,000/- as advance. The land, being the southern portion of Plot No. 80, T.S. No. 24, Block 24, Major Trustpuram, is described as Schedule-I in the plaint. The purchase was completed on 10.07.1991 in the name of the first defendant, using the sale proceeds of the earlier house and the plaintiff's savings.

2.2. Since the plaintiff had already availed loan facilities from the Bank, he advised the first defendant to obtain the housing loan in her own name. The



plaintiff stood as a guarantor. The first defendant obtained Rs. 1,50,000/- from the Bank and Rs. 70,000/- from IND Bank Housing Ltd. Along with the plaintiff's savings, they constructed a ground and first floor building of about 2,300 sq. ft. on the said plot, all standing in the name of the first defendant. The plaintiff also withdrew Rs. 25,800/- from his Provident Fund in July 1996 and used it towards construction. Thus, the building was completed using Bank loan in the first defendant's name, the plaintiff's Provident Fund withdrawal and the couple's joint savings.

2.3. The plaintiff and the first defendant initially led a happy married life. As the first defendant was found to be infertile, they decided to adopt a female child from the International Mission of Hope (India) Society at Chennai. Being Christians, they followed the procedure by filing O.P. No. 24 of 1991 before the Hon'ble High Court, Madras. After due enquiry, the Court appointed the plaintiff as guardian of the minor girl then called Shyama and granted temporary custody to both the plaintiff and first defendant. Subsequently the child's name was changed to "Jyothee". The plaintiff states that, though he was



technically appointed guardian, in reality the child has been brought up as his adopted daughter.

2.4. In recent years, the first defendant began to misbehave due to mental imbalance and was misguided by others, leading to frequent quarrels and difference of opinion. She often abused the plaintiff without reason, causing him great mental agony, and expressed an intention to dispose of the Schedule-I property and leave Chennai with the child. On 22.04.2001, she prevented the plaintiff from entering the house when he returned from office, threatened to commit suicide and kill the child, if he tried to live there. Fearing for their safety, the plaintiff left the house only with his clothes, leaving behind his belongings and two Kinetic Honda scooters purchased from his own funds, and temporarily took shelter at his brother's residence at 67, Bhagavathiamman Street, Kolathur, Chennai-600 099. The plaintiff repeatedly tried to pacify and contact the first defendant, but she remained adamant and even applied for a long leave from her office. After that, on 31.08.2001, she issued a legal notice by making false allegations against the plaintiff. To avoid further conflict, the



plaintiff ignored it but went to the house on 12.09.2001 hoping for compromise.

Instead, she again threatened to file a complaint. She complained to the R-2 Police Station, and the Police obtained from the plaintiff a written undertaking not to meet or speak with her.

2.5. The plaintiff alleges that the first defendant now plans to sell the suit properties and deprive him of his rightful half share, in favour of the second defendant or any other purchaser. The house property in Schedule-I and movables in Schedule-II are the joint properties acquired from the contributions of both the plaintiff and the first defendant. Out of love and affection for his wife and considering the welfare of minor child, the plaintiff spent all his savings on the Schedule-I house and also contributed to the acquisition of Schedule-II articles. Both the plaintiff and first defendant hold similar positions in Indian Bank, but the plaintiff earns about Rs. 2,000/- more per month and has continuously contributed from the date of marriage. Thus, he claims 1/2 share in all the Schedule properties and asserts that the Benami Transactions



(Prohibition) Act, 1988 does not apply. Hence, the plaintiff has filed this suit for partition by metes and bounds of the Schedule properties.

3. The first defendant had sold the schedule I property in favour of the second defendant who subsequently sold the said property in favour of the third defendant during the pendency of the suit.

4. The first defendant received the summon, but did not prefer to appear and set *exparte*. The Defendants 2 and 3 filed their written statement claiming that the first defendant alone is the owner of the suit property and the plaintiff did not have any share. Subsequently, they abandoned the suit and remained *exparte*.

5. The plaintiff examined himself as P.W.1 and Exhibits P1 to P18 were marked. In the evidence of the plaintiff, he has stated the same facts as alleged in the plaint.



6. The plaintiff and the first defendant while living together as husband and wife, had purchased the properties in their name and later, dealt with the same. In fact, the vacant site pertaining to the suit schedule I has been purchased in the name of the first defendant. However, the sale agreement was entered into between the vendor along with the plaintiff and the first defendant jointly. In the letter addressed by the first defendant to her employer she has stated that herself and her husband had availed Society loan jointly. The plaintiff has also availed non-refundable withdrawal of Provident Fund amount on 29.06.1996 and it is evidenced by Ex.P13.

7. The plaintiff had attached the estimate given by the Engineer for painting the suit schedule I house and it is also inclusive of the expenditure to be meted out for constructing the external toilet, country wood doors, AC sheet roof etc. These documents would show that the plaintiff has also contributed for the purchase and construction of the suit property. Since the plaintiff and first defendant had jointly raised funds and purchased the vacant site in the first schedule property on 10.07.1991, it is possible that the amount raised by selling



the first house to be used for the purchase of the site for the schedule I. The first defendant did not come to the box to disprove the plaintiff's claim by producing any evidence. The evidence produced by the plaintiff remains uncontroverted by the defendants.

8. The third defendant had purchased the suit property at the time when the suit was pending. As the third defendant had purchased the share of the plaintiff also from the first defendant and the sale was effected during the pendency of the suit, the third defendant is also bound by the decision of the suit.

9. In the judgment of the Hon'ble Supreme Court held in the case of ***T.G.Ashok Kumar Vs. Govindammal and Another, reported in (2010) 14 SCC 370***, the Hon'ble Supreme Court has held that the sale of the property by the co-owner during the pendency of the partition suit filed by the other co-owner would be subject to the decree in the partition suit. The relevant paragraphs are extracted hereunder:



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“13. The principle underlying [Section 52](#) is clear. If during the pendency of any suit in a court of competent jurisdiction which is not collusive, in which any right of an immovable property is directly and specifically in question, such property cannot be transferred by any party to the suit so as to affect the rights of any other party to the suit under any decree that may be made in such suit. If ultimately the title of the pendente lite transferor is upheld in regard to the transferred property, the transferee's title will not be affected.

14. On the other hand, if the title of the pendente lite transferor is recognized or accepted only in regard to a part of the transferred property, then the transferee's title will be saved only in regard to that extent and the transfer in regard to the remaining portion of the transferred property to which the transferor is found not entitled, will be invalid and the transferee will not get any right, title or interest in that portion.

15. If the property transferred pendente lite, is allotted in entirety to some other party or parties or if the transferor is held to have no right or title in that property, the transferee will not have any title to the property. Where a co-owner alienates a property or a portion of a property representing to be the absolute owner, equities can no doubt be adjusted while making the division during the final decree proceedings, if feasible and practical (that is without causing loss or hardship or inconvenience to other parties) by allotting the property or portion of the property transferred pendente lite, to the share of the transferor, so that the bonafide transferee's right and title are saved fully or partially.”



10. In the instant case, though there is evidence to show that the property has been purchased in the name of the first defendant, the plaintiff has also contributed towards the purchase of the vacant site and construction of the house. During the pendency of the suit, the third defendant has purchased the same from the first defendant alone by ignoring the half share of the plaintiff. At the time when the property was purchased, there was a cordial relationship between the plaintiff and the first defendant and out of the said relationship, the property has been purchased in the name of the first defendant. As the plaintiff has proved his half share in the suit schedule I property and also produced the documents to show that the articles in schedule II has also been purchased from his contribution, the plaintiff is entitled to get half share as claimed by him.

11. In the result, this Civil Suit is allowed and preliminary decree is passed as prayed in respect of the plaintiff's half share in the suit schedule properties. No costs.

03.12.2025

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

GSK



To

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DR.R.N.MANJULA, J.

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Pre-delivery judgment in

CS No. 869 of 2001

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