

APPLICATION No.3946 of 2025
in
C.S.No.730 of 2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2025

CORAM

THE HONOURABLE MR.JUSTICE P.DHANABAL

APPLICATION No.3946 of 2025

in

C.S.No.730 of 2019

Anusuya Devi

Applicant

Vs.

1.S.Nirmala Devi

2.N.Madhava Rao

Respondents

Prayer: Application filed under Order XIV Rule 8 of the Original Side Rules read with Order XII Rule 6, Order XV Rule 2 and Order XX Rule 18 of C.P.C, 1908, to pass preliminary decree for partition and allot 1/3rd share each in the properties mentioned in Schedule Nos.I, IV, V and VI of the plaint in C.S.No.730 of 2019 to the applicant and the respondents herein and continue the suit insofar as the remaining properties are concerned.



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For Applicant : Mr.Srinath Sridevan
Senior Counsel
for Mr.Guru Dhananjay

For Respondents : M/s.Sirish Chowdhary
for M/s.T.M.Naidu and Co
for R1
Mr.T.N.Rajagopalan for R2

ORDER

This Application has been filed for passing preliminary decree for partition and to allot 1/3rd share each in the properties mentioned in Schedule Nos.I, IV, V and VI of the plaint in C.S.No.730 of 2019 to the applicant and the respondents herein and continue the suit insofar as the remaining properties are concerned.

2. The applicant is the fourth defendant in the main suit and there is no dispute in respect of joint possession of the properties. The applicant and the respondents are co-sharers and they are entitled to 1/3rd share each in the properties. Therefore, the applicant has filed this application to pass preliminary decree based on the admitted facts pleaded by the plaintiff and the other defendants.

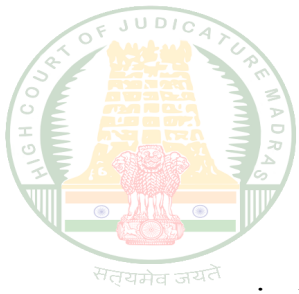


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3. According to the second respondent/first defendant, this application is premature. Initially, the suit was filed for partition in respect of Schedule Nos.I to X of the properties and thereafter, the first respondent/plaintiff has filed application to amend the plaint by including Schedule Nos.XI to XLII of the properties and to implead the respondent Nos.5 to 39 as the defendants and the same were allowed by this Court. The second respondent/first defendant along with the defendants Nos.2 and 3 have filed application to decide the Court fee. The fourth defendant has not paid any Court fee and therefore, he cannot file this application. Hence, this application is liable to be dismissed.

4. The learned counsel appearing for the applicant would submit that the applicant is the fourth defendant in the suit and has filed this application for passing preliminary decree for partition and to divide the suit properties into three equal shares. The plaintiff admitted the joint ownership and therefore, she is entitled for shares in respect of Schedule Nos.I, IV, V and VI of the suit properties. The second respondent/defendant No.1 in the counter filed in Application No.1196 of 2019 categorically admitted that he is ready for



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amicable partition insofar as Schedule Nos.I, IV, V and VI of the suit properties are concerned and he has no objection in respect of partition of Schedule Nos.I, IV, V and VI of the suit properties. The present application is filed seeking preliminary decree for partition in respect of Schedule Nos.I, IV, V and VI of the properties and therefore, it has to be allowed.

5. The learned counsel appearing for the second respondent/first defendant would submit that this application is not maintainable and the non-traversal of each and every averment and allegations made by the applicant/fourth defendant does not amount to admission of the same. Initially, the suit was filed for partition in respect of Schedule Nos.I to X of the suit properties and thereafter, the other properties were included by way of amendment and the defendant Nos.5 to 39 were impleaded. The second respondent/first defendant has filed application under Section 12(2) of the Tamil Nadu Court Fees and Suit Valuation Act [hereinafter referred to as 'the Act'] to pay the Court Fee under Section 37(1) of the Act and the same is pending and therefore, this application is premature. The applicant/fourth defendant has not paid any Court fee and therefore,



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this application is not maintainable. Some of the properties mentioned in Schedule No.1 were already sold by the father of the plaintiff through sale deeds, particularly, Survey No.50/2A1 measuring to an extent of 315 sq.ft., was sold to one Gomathy, wife of Srinivasan by the father of the plaintiff and the defendant No.1, namely, Mr.M.A.V.Narayana RAO. In the same Survey number, 315 sq.feet was sold to Sujatha wife of Elangovan and in the same survey number, 315 sq.ft was sold to one Vimala wife of Madhav Rao by the father of the plaintiff and the defendant Nos.1 and 2 and the said survey numbers are shown as Schedule No.I of the suit properties and the above said sale deeds were executed on 10.12.2001. Therefore, without impleading them, the suit cannot be effectively decided and therefore, preliminary decree in respect of the above suit properties cannot be decided at this stage.

6. The learned counsel appearing for the first respondent/plaintiff has no objection to allow this application.

7. This Court heard the arguments advanced by both sides and perused the materials available on record.



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8. In this case, it is an admitted fact that initially, the plaintiff has filed the suit for partition against the defendant Nos.1 to 4 in respect of Schedule Nos.I to X of the properties and thereafter, the plaintiff impleaded the other defendants and included the properties in Schedule Nos.XI to XLII of the suit properties. The second respondent/first defendant also admitted the ownership and joint possession of the suit properties in Schedule Nos.I, IV, V and VI. However, one portion of Schedule No.I of the suit properties was sold by the father of the plaintiff and the defendant Nos.1 and 2 and the purchasers of those properties had not been included as parties to the suit and therefore, the second respondent/first defendant objected to pass preliminary decree for partition in respect of these properties. It is an admitted fact by the second respondent/first defendant in the counter filed by him in Application No.1196 of 2019, wherein, he stated as follows:-

“I respectfully submit that insofar as Schedule I, IV, V and VI are concerned, I am ready for amicable partition and it is the Petitioner who did not come forward partition inspite of my request and in so far as the Schedule VIII is concerned, the property could not be traced. As far as



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Schedule II, III, VII, IX and X are concerned, it is already settled by my father”.

9. From the aforesaid counter averments of the second respondent/first defendant, it is clear that he is ready for amicable partition in respect of Schedule Nos.I, IV, V and VI of the properties. Now, the present application has been filed by the applicant/fourth defendant to pass preliminary decree in respect of those properties. However, the second respondent/first defendant brought to the notice of this Court that in Schedule No.I of the suit properties, Survey No.50/2A1 was already sold by the father of the plaintiff and the defendant Nos.1 and 2 on 10.12.2001 itself and those purchasers are not parties to the suit and therefore, it is not proper to pass preliminary decree in respect of Schedule No.I of the suit property. As far as other properties, namely, Schedule Nos.IV, V and VI of the suit properties are concerned, the plaintiff seeks partition over 1/3rd share and the defendants also admitted the joint possession of the shares by the plaintiff and the parties are entitled to preliminary decree.



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10. The learned counsel appearing for the applicant relied upon the following judgments:-

“(i) Meera Gupta vs. Dinesh Chand and others reported in 2002 (63) DRJ 264 (DB);

(ii) K.Ramkumar vs. Marimuthur in C.R.P.(MD).No.2315 of 2016 dated 12.07.2024.”

11. A careful perusal of the above judgments makes it clear that controversy on merits on disputed question of fact cannot be decided while deciding the application under Order XII Rule 6 C.P.C and the admissions should be unconditional, unequivocal and unambiguous and the admission can be decided at any stage of the trial under Order XII Rule 6 C.P.C. In the case on hand also, the plaintiff filed the suit for partition claiming 1/3rd share and one of the defendants admitted the joint possession and the fourth defendant filed an application to pass preliminary decree based on the admission made by the parties.

12. Now, this application is filed by the applicant/fourth defendant and he has not paid any Court fee. However, mere non-payment of Court fee alone is not a bar to pass preliminary decree and this Court can very



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well direct the parties to pay the Court fee. Therefore, this Application is to be allowed and the preliminary decree is passed in respect of Schedule Nos.IV, V and VI of the suit properties. The aforesaid properties are ordered to be divided into three equal shares and allot one such share to the plaintiff and allot one such share to the fourth defendant and the fourth defendant is directed to pay the Court fee in accordance with law.

13. With the aforesaid directions, this Application is disposed of.
There shall be no order as to costs.

25-09-2025
(2/2)

ssb

Index:Yes/No

Speaking Order/Non-Speaking Order

NCC:Yes/No



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P.DHANABAL, J.

ssb

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