



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2025

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CORAM :

THE HONOURABLE MR. JUSTICE R.SAKTHIVEL

APPEAL SUIT NO.939 OF 2020

AND

CMP NOS.13222 OF 2020 & 8769 OF 2023

1.S.Thamaraiselvi
W/o. Sundaramurthy

2.Venkatesan Elumalai
S/o. M.Elumalai*

... Appellants / Defendants

[*Appellant No.2 is represented by
the first appellant - S.Thamaraiselvi,
Power of Attorney Agent vide Order
of this Court dated March 13, 2020
made in CMP No.6038 of 2020 in
AS.SR.No.129793/2019]

Vs.

E.Bharani
W/o. P.Ellappan

... Respondent /
Plaintiff

(Note: Cause-title accepted vide Order of this Court dated March 13, 2020
made in CMP No.6033 of 2020 in AS.SR.No.129793 of 2019)

PRAYER: First Appeal filed under Section 96 read with Order XLI Rule 1
of the Code of Civil Procedure, 1908 praying to set aside the Judgment and
Decree dated July 5, 2019 passed in O.S.No.3826 of 2013 by the learned
XV Additional Judge, City Civil Court, Chennai.

For Appellants : Mr.R.Natarajan
For Respondent : Ms.C.Jayachithra
for M/s.T.S.Baskaran



JUDGMENT

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Feeling aggrieved by the Judgment and Decree dated July 5, 2019 passed in O.S.No.3826 of 2013 by the 'XV Additional Judge, City Civil Court, Chennai' ['Trial Court' for brevity], the defendants therein have filed this Appeal Suit under Section 96 read with Order XLI Rule 1 of 'the Code of Civil Procedure, 1908' ['CPC' for short].

2. For the sake of convenience, hereinafter, the parties will be referred to as per their array in the Original Suit.

PLAINTIFFS' CASE

3. The case of the plaintiff is that one Saroja is the original owner of the Suit Property vide Sale Deed dated May 9, 2000. One Elumalai is the husband of Saroja. They have two sons and four daughters. Elumalai passed away on August 27, 1983. The owner of the Suit Property namely Saroja passed away on March 19, 2008. The three sharers namely Kalaiselvi, Malliga and Rajesh Kannan executed a Released Deed dated July 28, 2009 in favour of the plaintiff after receiving a valuable consideration of Rs.15,00,000/- (each Rs.5,00,000/-). Thus, the plaintiff and the defendants are co-owners and the plaintiff is entitled to 4/6 share and the defendants 1 and 2 are entitled to 1/6 share each. The plaintiff



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residing in the Suit Property along with her family. She is in possession and enjoyment of the entire Suit Property. The plaintiff demanded for peaceful partition which the defendants refused. Hence, after exchange of notices, the plaintiff has filed the present Suit for partition of her 4/6 share in the Suit Property.

DEFENDANTS CASE

4. The first defendant filed written statement and *qua* Power of Attorney holder of second defendant, adopted the written statement.

4.1. The sum and substance of the written statement is that the Suit is bad for non-joinder of necessary parties, namely, Kalaiselvi, Malliga and Rajesh Kannan. Further, the plaintiff tried to forcibly enter into the Suit Property and demanded release of the defendants' shares in her favour, for which, the defendants refused. The plaintiff further adopted unlawful and illegal means and gained possession of the Suit Property. The defendants lodged a police complaint against the plaintiff. The plaintiff is liable and answerable for *mesne* profits and damages to the defendants right from the demise of Saroja. Accordingly, the defendants prayed to dismiss the Suit.



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

- '(1) Whether the plaintiff is entitled for preliminary decree to get 4/6th share in the Suit Property ?*
- (2) Whether the Suit is bad for non joinder of necessary parties?*
- (3) To what other relief the plaintiff is entitled?'*

6. At trial, on the side of the plaintiff, plaintiff was examined as P.W.1 and Malliga, Kalaiselvi and Rajesh Kannan were examined as P.W.2 to P.W.4 respectively and Ex-A.1 to Ex-A.10 were marked. On the side of the defendants, first defendant was examined as D.W.1 and one K.E.Srinivasan was examined as D.W.2 and Ex-B.1 to Ex-B.7 were marked. One Mr.P.Ellappan, the husband of the plaintiff was examined as C.W.1.

7. After full-fledged trial, the Trial Court concluded that after the demise of Saroja, her legal heirs are entitled to 1/6 share each. The other sharers namely Kalaiselvi, Malliga and Rajesh Kannan viz., P.W.2 to P.W.4 executed a registered Release Deed dated July 28, 2009 in favour of the plaintiff. Since the three sharers executed a Release Deed in favour of the



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plaintiff, the plaintiff is entitled to 4/6 share and the defendants are entitled to 1/6 share each. The Suit is not bad for non-joinder of necessary parties.

Accordingly, the Trial Court granted preliminary decree for partition.

8. Feeling aggrieved, the defendants therein have preferred this First Appeal under Section 96 read with Order XLI Rule 1 of the CPC.

ARGUMENTS

9. Mr.R.Natarajan, learned Counsel appearing for the appellants / defendants submits that Saroja's two daughters and one son namely Kalaiselvi, Malliga and Rajesh Kannan are necessary parties to the Suit. Since they are not impleaded despite the defendants' pleadings, the Suit ought to have been dismissed. He further submits that no consideration was passed under the alleged Release Deed dated July 28, 2009. The Trial Court without considering the evidence, decreed the Suit. Accordingly, he prays to allow this Appeal Suit.

10. Per contra, Ms.C.Jayachithra representing Mr.T.S.Baskaran, learned Counsel on record for the respondent / plaintiff submits that the original owner of the Suit Property viz., Saroja passed away intestate on March 19, 2008 as a Hindu. Hence, as per Section 15(i)(a) of the Hindu



Succession Act, 1956, the said Saroja's legal heirs are entitled to each 1/6 share. She further submits that Saroja's legal heirs namely, Kalaiselvi, Malliga and Rajesh Kannan executed Ex-A.4 - Release Deed dated July 28, 2009 for valuable consideration of Rs.15,00,000/. Hence, they are not necessary parties to the Suit. Moreover, they were examined as P.W.2 to P.W.4. The Trial Court, after considering the entire evidence, rightly decreed the Suit. There is no warrant to interfere in it. Accordingly, she prays to dismiss the Appeal Suit.

DISCUSSION

11. Heard on either side. Perused the evidence available on record.

The following points arise for consideration in this Appeal Suit:

- (i) Whether Ex-A.4 - Release Deed dated July 28, 2009 executed by Kalaiselvi, Malliga and Rajesh Kannan is true and valid?
- (ii) Whether the Suit is bad for non-joinder of necessary parties, namely Kalaiselvi, Malliga and Rajesh Kannan ?
- (iii) Whether the defendants are entitled to *mesne* profits ?
- (iv) Whether the Judgment and Decree of the Trial Court is to be interfered with by this Court?



Point Nos.(i) and (ii)

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12. Admittedly, the Suit Property was acquired vide Ex-A.1 - Sale Deed dated May 9, 2000 by Tmt.Saroja. She passed away intestate on March 19, 2008 as a Hindu. Hence, the applicable law in this case is Hindu Succession Act, 1956. As per Section 15(i)(a) of the Hindu Succession Act, 1955, her legal heirs are each entitled to 1/6 share in the Suit Property.

13. On July 28, 2009 among the six legal heirs, three legal heirs namely Kalaiselvi, Malliga and Rajesh Kannan executed Ex-A.4 - registered Release Deed releasing their 3/6 share in the Suit Property in favour of the plaintiff. Thus, the plaintiff is entitled to $3/6 + 1/6 = 4/6$ share in the Suit Property. The defendants are entitled to 1/6 share each. The plaintiff examined the releasors namely Kalaiselvi, Malliga and Rajesh Kannan as P.W.2 to P.W.4. Their evidence is reliable and trustworthy and supports the case of the plaintiff. The defendants would contend that P.W.4 namely Rajesh Kannan is an illiterate person and taking advantage of his innocence, the plaintiff without giving any consideration obtained release from him. But P.W.4 has clearly deposed that he received Rs.5,00,000/- as consideration for the release and that he utilised the same to purchase jewels for his wife as well as to meet out some medical expenses. In view of the clear deposition of P.W.4, the said contention deserves to be rejected.



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14. Bare reading of the evidence of P.W.2 to P.W.4 proves that Ex-A.4 –Release Deed is a true and genuine one. When P.W.2 to P.W.4 who executed Ex-A.4 - Release Deed appeared before the Court and admitted the same, the defendants who are not parties and not claiming any right vide the Release Deed, are not entitled to question the same. As P.W.2 to P.W.4 have released all their shares by way of Ex-A.4 – registered Release Deed, they are not necessary parties to the Suit. They have also been examined in this case as P.W.2 to P.W.4. Hence, the Suit is not bad for non-joinder of necessary parties. **Point Nos.(i) and (ii) are answered accordingly in favour of the plaintiff and against the defendants.**

Point No.(iii)

15. In Paragraph No.4 of the written statement, the defendants have sought for *mesne* profits. This Court deems fit to refer to the Judgment of this Court in ***R.Rani -vs- R.Hemavathi***, bearing neutral citation **2025:MHC:1581**, wherein it has been held as follows:

“35. It is settled law that in a Suit for partition, Order XX Rule 12 of CPC cannot be applied. In a Partition Suit covered under Order XX Rule 18 of CPC, the further relief shall only be rendition of accounts and not mesne profits. Without appreciating the said aspect in the right perspective, the Trial Court granted mesne



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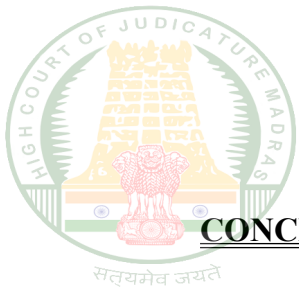
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profits, which is not the right approach. The defendants are liable to render accounts in respect of the income from the Suit Item No.1 from the date of Suit up to complete partition and delivery of possession [See Judgment of this Court in Babburu Basavayya -vs- Babburu Guravayya, reported in AIR 1951 Mad 938 (FB), and in Subba Reddiar -vs- Hazra Bibi, reported in AIR 1973 Mad 237]... ”

16. Thus, it is clear that the further relief the defendants can seek in a partition Suit is only rendition of accounts and not *mesne* profits. Admittedly, the plaintiff is residing in the Suit Property. Hence, the defendants are at liberty to file appropriate applications for rendition of accounts before or at the time of Final Decree proceedings. **Point No.(iii) is answered accordingly.**

Point No.(iv)

17. As already discussed under Point Nos.(i) and (ii), the plaintiff is entitled to 4/6 share and the defendants 1 and 2 are entitled to 1/6 share each. The Trial Court, after considering the oral and documentary evidence, has rightly decreed the Suit and there is no warrant to interfere in it. **Point No.(iv) is answered accordingly in favour of the plaintiff and against the defendants.**



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CONCLUSION

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18. Resultantly, the Appeal Suit is dismissed. Considering the relationship between the parties, there shall be no order as to costs. Consequently, connected Civil Miscellaneous Petitions are closed.

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Index : Yes

Speaking Order : Yes

Neutral Citation : Yes

TK

To

The XV Additional Judge

City Civil Court

Chennai.



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