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C.S.No.731 of .



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 11.03.2025	PRONOUNCED ON 23.06.2025
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CORAM :

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

C.S.No.731 of 2018

1.V.P.Bhuvaaneshwarei
2.V.P.Umamageswari

... Plaintiffs

vs.

1.P.Kasthuri (deceased)
2.V.P.A.Ganeshan

... Defendants

(Plaintiffs 1 & 2 and 2nd defendant are legal representatives of the deceased 1st defendant as per the order dated 11.04.2022 in A.No.966 of 2022 and time extended as per order dated 25.02.2025 in C.S.No.731 of 2018)

Prayer : Civil Suit filed under Order IV Rule 1 & 2 of Madras High Court Original Side Rules read with Order VII Rule 1 of CPC to pass decree and Judgment against the defendant as hereunder:-

a)For partition and separate possession of the plaintiffs 1/3rd share each in the schedule mentioned properties by metes and bounds;

b) for cost of the suit; and

e) for such further or other reliefs, as this Court may deem fit and



proper in the circumstances.

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For Plaintiffs : Mr.Jayaprakash Narayanan
For defendants : set ex-parte on 20.10.2023

J U D G M E N T

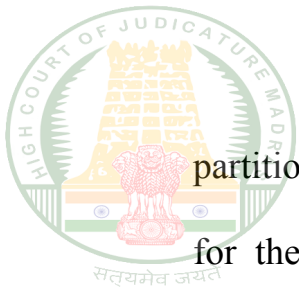
This Civil Suit has been filed for partition and separate possession of the plaintiffs 1/3 share each in the schedule mentioned properties.

2) It is the case of the plaintiff that one V.R.Palanisamy was working in the Government Service and retired as a settlement officer in the land ceiling office. He worked for more than 32 years. The plaintiffs and second defendant are the children and the first defendant is the wife of V.R.Palanisamy. The said V.R.Palanisamy purchased properties in his name and his wife's name. The first defendant is a house wife and did not have any income of her own. The Properties are purchased and developed out of the funds of V.R.Palanisamy. The late V.R.Palanisamy was the absolute owner of the schedule mentioned properties and was in his exclusive possession and enjoyment of the same. The said properties were purchased in his wife's name only from his own funds and his wife did not have an independent source of income. The father of the



plaintiffs and the second defendant died intestate on 20.10.2014 leaving behind the plaintiffs and the defendants as his legal heirs. The plaintiffs and the second defendant have got 1/3 rd share each as per the Hindu Succession Act. The first item of the schedule mentioned property is in the possession and enjoyment of the plaintiffs and the remaining properties are in the joint possession and enjoyment of the plaintiffs and the defendants. The defendants taking advantage of the sale deeds registered in the name of the first defendant, are attempting to grab the entire properties mentioned in the schedule hereunder for their own. The acts of the defendants are illegal and unlawful. The defendants are acting against the welfare and interest of the plaintiffs.

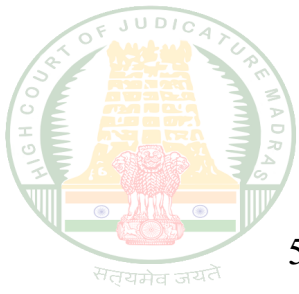
3) The first plaintiff got married to one M.Kannan on her own on 18.11.2015. Likewise, the second plaintiff also got married on 07.12.2015 after the demise of V.R.Palanisamy. Neither the defendants nor the father of the plaintiffs incurred any expense for the marriage of the plaintiffs. While, the second plaintiff is working as a system analyst at Chennai has given a sum of Rs.19,56,037/- from her own earnings to her father during his lifetime for the construction of house in the second item of the schedule mentioned property. As such the second plaintiff is entitled to recover the same from the properties of her father irrespective of her share in them. The plaintiffs asked for the



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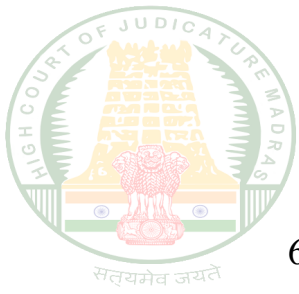
partition of their 1/3 share each in the schedule mentioned properties and asked for the separate possession of the same. But the defendants are not at all heeding to it with unlawful and malafide intention. The plaintiffs caused a legal notice dated 08.02.2017 to the defendants asking for partition and separate possession of their 1/3 share each in the plaint schedule properties. The defendants even after receipt of the legal notice did not come forward for partition or send any reply to the legal notice. The plaintiffs are having lawful share over the schedule properties. Pending suit, the first defendant died on 31.05.2021 and her legal heirs are already on record vide order dated 11.04.2022 in A.No.966 of 2022. The plaintiffs filed an application in A.No.1923 of 2024 to delete the item No. 2 properties since, it is acquired by the Government even before institution of this suit and the same was granted by this Court vide order dated 08.04.2024 to delete the item No.2 in the suit schedule property. Hence, the plaintiffs filed this suit for partition and separate possession claiming for 1/3 share in the suit schedule properties.

4) On the side of the plaintiffs, Mrs.V.P.Bhuvaaneshwarei, the first plaintiff was examined as PW1 and Ex.P1 to Ex.P16 were marked. The second defendant inspite of service of summons on him, kept himself away from the suit proceedings and was set exparte on 20.10.2023.



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5) Mr.Jayaprakash Narayanan, learned counsel for the plaintiffs submits that the plaintiffs and the second defendant are the children of V.R.Palanisamy and the first defendant. He submits that the said V.R.Palanisamy has served as Government Servant for more than 32 years and purchased the suit schedule properties in his name and in his wife's name. He further submits that V.R.Palanisamy was the sole breadwinner of the family and he had purchased the properties from the income earned by him. The sale deeds of the suit schedule properties pertaining to item 3 to 6 executed in favour of wife were marked as Ex.P3, Ex.P4, ExP6 and EX.P7. He further submits that the first item of the properties was allotted by the Government to V.R.Palanisamy and the consideration amount for the allotment was paid by him from the income earned by him and the said government order is marked as Ex.P1. He further contends that the first defendant was the housewife and did not have any income of her own and she was fully dependent on V.R.Palanisamy for her maintenance and livelihood. He further submits that the father of the plaintiffs was the absolute owner of the schedule mentioned properties and was in his exclusive possessions and enjoyment of the same. He contends that the items 3 to 6 of the plaint, were purchased in the name of the first defendant who did not have an independant source of income.



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6) He further submits that the father of the plaintiffs died on 20.10.2014 leaving behind the plaintiffs and the defendants as his legal heirs. The death certificate of the deceased marked as Ex.P9. He further submits that the plaintiffs produced the family card of V.R.Palanisamy as Ex.P8, wherein it shows that the plaintiffs and defendants are the family members of V.R.Palanisamy. After the demise of V.R.Palanisamy, the plaintiffs and the defendants have been in joint possession and enjoyment of the same. Since, the first defendant died on 31.05.2021, the plaintiffs and the second defendant are entitled to 1/3 share each in the suit schedule properties as per the Hindu Succession Act. He submits that the plaintiffs are in the possession and enjoyment of the first item of the schedule mentioned properties and remaining properties are in the joint possession and enjoyment of the plaintiffs and the defendants. He further contends that defendants taking advantage of the sale deed registered in the name of the first defendant are acting with a dishonest intention to cheat and defraud plaintiffs of their lawful and legitimate share in the schedule mentioned property. He further contends that the defendants are continuously attempting to grab the entire properties mentioned in the suit schedule. He further submits that the acts of the defendants are highly illegal, without any authority and basis and the defendants cannot deny the shares of



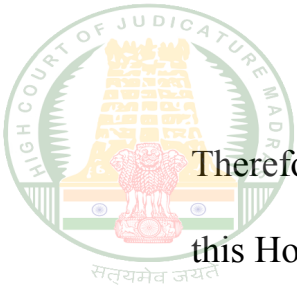
the plaintiffs.

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7) He further submits that the expenditure of the marriage of both the plaintiffs are borne by themselves and neither the father of the plaintiffs nor the defendants supported the marriage of the plaintiffs. He further submits that the second plaintiff has given a sum of Rs.19,56,037/- from her own earnings to their father during his lifetime for the construction of house in the second item property. He further submits that the second plaintiff is also entitled to recover the same from the properties of her father irrespective of her share in them. He further submits that the defendants refused to come forward to execute the partition and the plaintiffs sent the legal notice on 08.02.2017 under Ex.P10 asking for the partition and separate possession of 1/3 share each in the plaintiff schedule properties. He further contends that even after the receipt of the legal notice the defendants did not come forward for partition or chose to Send reply notice to the legal notice. During the pending litigation, the first defendant, who is the mother of the plaintiffs and the second defendant died on 31.05.2021. He submits that an application was filed in A.No.1923 of 2024 to delete the item No. 2 properties since, it is acquired by the Government even before institution of this suit and the same was granted by this Court vide order dated 08.04.2024 to delete the item No.2 in the suit schedule property.

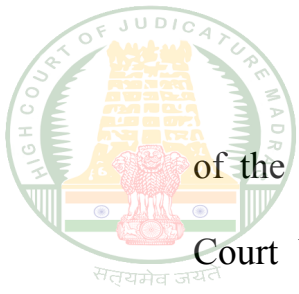


Therefore, the plaintiffs claim for 1/3 share instead of ¼ share. Hence, he prays this Hon'ble court to decree the suit as prayed for.

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8) Considered the submissions and perused the materials available on record.

9) The property originally belong to one V.R.Palanisamy and the first defendant. It is the case of the plaintiff that the property that is standing in the name of the first defendant were all purchased by father of the defendants as the first defendant do not have independent source of income. The defendants had remained *ex-parte*. The first defendant died *lis pendens* and this Court by its order dated 11.04.2022 had allowed the application in A.No.966 of 2022 by recording that the plaintiffs and the second defendant are the legal representatives of the deceased first defendant. Since, the written statement has not been filed and there was no appearance on the side of the defendant, the second defendant was called absent and set *ex-parte* by order of this Court dated 20.10.2023 and the suit was relegated to learned Master for recording of evidence. A further application in A.No.1923 of 2024 was filed for amendment of plaint in respect of the shares of the respective parties, in view of the death



of the first defendant. The said application also came to be allowed by this Court by its order dated 08.04.2024 and thereafter, the matter was again relegated to learned Master for recording of evidence after the amendment of the plaint. The evidence had been recorded in the case as *ex-parte*. Even though, the second defendant had undertook to file Vakalath as early as in the year 2022, he seems to have not taken any further steps and therefore, he cannot be said to be unaware of the proceedings.

10) The plaintiffs have asserted their claim to the suit and this Court finds that the claim of the plaintiffs is also substantiated by the various materials produced by them.

11) In fine, a preliminary decree is passed as prayed for holdings that the plaintiffs and the second defendant are entitled to 1/3rd share each in the schedule mentioned properties. Considering the relationship between the parties, there shall be no order as to costs.

23.06.2025

Index : Yes / No
Internet : Yes / No
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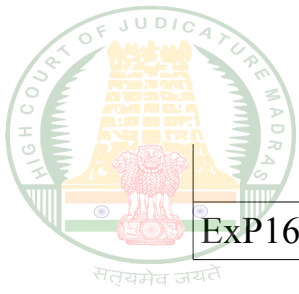
List of witnesses examined on the side of the plaintiffs:

PW1- Mrs.V.P.Bhuvaaneshwarei

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List of documents marked on the side of the plaintiff:

Exp1	The photocopy of the proceedings of the District Collector No.O3/32611/88	07.07.1988
Exp2	The Extract of the Town Survey Land Register	26.10.1988
Exp3	The certified copy of the sale deed Doc.No.2033 of 1991	30.09.1991
Exp4	The certified copy of the sale deed Doc.No.2034 of 1991	30.09.1991
Exp5	The certified copy of the sale deed Doc.No.998 of 1998	05.03.1993
Exp6	The certified copy of the sale deed Doc.No.3655 of 1999	08.12.1999
Exp7	The certified copy of the sale deed Doc.No.444 of 2000	11.02.2000
Exp8	The photocopy of the family card	2005 to 2009
Exp9	The Photocopy of the Death Certificate of V.R.Palanisamy	
Exp10	The Legal Notice	08.02.2017
Exp11	The photocopy of the Aadhar Card of V.P.Bhuvaaneshwarei (Original seen and returned)	
Exp12	The photocopy of the Aadhar Card of V.P.Uma Mageswari	
Exp13	The photocopy of the Family Card of Bhuvaaneshwarei	
Exp14	The photocopy of the E.B. Bill standing in the name of V.R.Palanisamy.	
Exp15	The photocopy of the property Tax Receipt	



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	standing in the name of V.R.Palanisamy.	
Exp16	The photocopy of the Water Supply Receipt	26.09.2017

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List of witnesses examined on the side of the defendants:

Nil

List of documents marked on the side of the defendants:

Nil

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K.KUMARESH BABU.J.,

Gba

Pre-delivery Order in
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