



WEB COPY

AS No. 797 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20-04-2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.RAJASEKAR

AS No. 797 of 2023

1. S.Ragini
2. R.Nalini
3. Theshana (Minor)
Minor rep by her natural Guardian/Mother
R.Nalini.
4. Elan (Minor)
Minor rep by her natural Guardian/Mother
R.Nalini.

..Appellant(s)

Vs

A.Bharathi

..Respondent(s)

Appeal against the judgment and Preliminary Decree, dated 06.04.2023, made in O.S.No.2593/2022 on the file of XXIII Additional City Civil Court, Chennai.

For Appellant(s): Mr.S.Mannarsamy

For Respondent(s): Mr.M.V.Seshachari



JUDGMENT

(Judgment of the Court was delivered by K.Rajasekar J.)

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The defendants in the suit have come forward with this Appeal Suit, challenging the declaration of 1/3 share in favour of the plaintiff in the suit property and the consequential preliminary decree passed for partition of the suit property.

2. The parties herein are referred to as per their litigative status before the trial Court.

3. The plaintiff, respondent herein, had instituted the suit for partition, claiming that the suit property was originally purchased by her father, namely, Sekaran by way of a sale deed, dated 21.08.2002, from Tamil Nadu Slum Clearance Board. Thereafter, her father had constructed a building in the suit property from and out of his own income and was residing along with her and the defendants. Second defendant is the wife and first defendant is the son of Sekaran, who died intestate in the year 2018, leaving behind the plaintiff and the defendants. Since plaintiff was not allowed to enjoy the suit property, she issued a legal notice, dated 17.02.2022, to the defendants seeking partition of 1/3 share. The said notice was replied by the defendants, stating that they had spent huge amount for construction of house and also provided sridhana to the plaintiff at the time of her marriage, hence, she was not entitled for any share in the suit property. Therefore, the suit was filed by the plaintiff.



4. The defendants contested the suit by filing a written statement, and contending that they had incurred huge amount for the purpose of conducting marriage of the plaintiff and also given huge gold and jewels to the plaintiff. Further, the plaintiff had not joined with her husband and was residing with another person. Hence, they objected to the plaintiff's attitude and prayed for dismissal of the suit.

5. The trial Court, after considering the evidence on record and framing necessary issues, accepted the case of the plaintiff and declared that the plaintiff would be entitled to 1/3 share in the suit property. Accordingly, it decreed the suit. Aggrieved over the said judgment and decree and allotment of 1/3 share, this appeal has been filed by the defendants.

6. The points that arise for consideration in this appeal is, whether the finding of the trial Court that the plaintiff would be entitled to 1/3 share and consequential relief of grant of separate possession of suit property was proper or not ?

7. Learned counsel for the appellants would submit that the defendants had incurred huge amount for constructing the house in the suit property and they also produced documentary evidence to establish the same. He further submitted that the trial Court failed to consider the evidence adduced to show that huge amount was spent for the marriage of the plaintiff and hence he prayed to set aside the judgment and the decree impugned herein.

8. On the other hand, learned counsel for the respondent would submit



that the trial Court had elaborately considered the evidence placed on record and that the defendants had not produced any documentary proof to substantiate their case that they incurred huge amount for construction of house in the suit property. He would also submit that the property was developed even during the lifetime of the father of the plaintiff and hence the case of the appellants falls to the ground. Accordingly, he prays to confirm the judgment and the decree passed by the trial Court.

9. We have considered the submissions made on both sides and also perused the records.

10. The plaintiff examined herself as P.W.1 and marked Exs.A-1 to A-6 on her behalf. The said exhibits include Legal Notice issued by the plaintiff to the defendants; Sale Deed, standing in the name of father of plaintiff – Sekaran; and also the Legal Heir Certificate of Sekaran.

11. Though the defendants examined the first defendant as D.W.1, they had not produced any documentary proof to show that they incurred huge expenses for constructing the house in the suit property. Since no exhibits were marked and there was no corroboration of the evidence of D.W.1, the trial Court rejected the case of the defendants to the effect that they developed the property and incurred huge expenses. Further, based on the admission and considering the relationship between the parties, the trial Court accepted the case of the plaintiff and declared that the plaintiff would be entitled to 1/3 share in the suit property and accordingly passed the preliminary decree for partition. We find



no infirmity in the said finding of the trial Court, as the same was based on valid reasons. Accordingly, the judgment and the decree passed by the trial Court are confirmed.

12. Though learned counsel for the appellants submitted that they incurred huge expenses for constructing the house and various documents were available with them but not produced before the trial Court at the time of trial and now they are ready to produce the same, we permit the appellants-defendants to produce the same before the trial Court in the final decree proceedings, based on which the trial Court shall proceed with the final decree proceedings in I.A.No.2 of 2023 and pass orders within six months.

13. Appeal Suit is dismissed accordingly. No costs.

(C.V.K.,J.) (K.R.S.,J.)
20-04-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

DIXIT

To
XXIII Additional Judge,
City Civil Court,
Chennai.



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**C.V.KARTHIKEYAN, J.
AND
K.RAJASEKAR, J.**

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