

IN THE COURT OF THE SUBORDINATE JUDGE, UDHAGAMANDALAM.

Present: Thiru.C.Sridhar,B.Sc., B.L.,
Subordinate Judge

THURSDAY, THE 02nd DAY OF NOVEMBER 2023

O.S.No.204/2022

M.S.Muthuswamy

...Plaintiff

-Vs-

01. Saraswathi

02. Manickavalli

03. Neelaveni

04. M.S. Nirmaladevi

05. M.S. Sachithanandam

06. Maheswari

07. I. Dilip Kumara

08. I. Silambarasi

09. I. Kathiravan

...Defendants

This suit coming on 20.10.2023 before me for final hearing in the presence of **Tr.P.N.Deenadayal**, Advocate for the plaintiff, **Tmt.K.Pitchaiammal**, Advocate for the 1st to 4th defendants and **Tr.R.Hariharan**, Advocate for the 5th defendant and **Tr.B.S.Sivakumar**, Advocate for the 6th to 9th defendants and upon hearing the arguments on both sides and having stood over for consideration till this day, this Court delivered the following:-

JUDGMENT

This plaintiff filed a suit for partition against this defendants in respect of 1/7 share of the suit schedule property and cost of the suit.

Brief Averments of the Plaint filed by the Plaintiff is as follows :-

01. The plaintiff and defendants 1 to 5 and one late.Inbasekaran were born to Shri. MM. Sundaram and Smt.Mariyae Ammal. The defendants 1 to 4 are the sister of the plaintiff and 5th defendant is the brother of the plaintiff and 6th defendant is wife of deceased plaintiff's brother namely Shri.Inbasekaran and 7 and 9th defendants are sons and 8th defendant is daughter of deceased Shri.Inbasekaran. The suit "A" schedule property was allotted to his father in O.S.No.151/1978 and "B" schedule property was inherited by plaintiff's mother by way of release deed executed by the brothers of the plaintiff's mother on 16.07.1987. Further, plaintiff's father was died on 02.01.1995 and mother was died on 22.01.1998. After that plaintiff and defendants are enjoying the suit schedule property as a legal heirs. The 1st defendant is staying in Item No.1 of the "A" Schedule property and 5th defendant is staying in portion of the "B" Schedule property and 7 to 9 defendants are staying in the remaining portion of the "B" Schedule properties. After that plaintiff had requested for partition of the suit schedule property and defendants have also agreed for same. However, they are not come forwarded to execute the proper partition deed. Hence the suit.

Brief Averments of the Written Statement filed by the 1st defendant is as follows :-

02. The relationship between the plaintiff and defendants are admitted true. The 1st defendant is staying in the one portion of the suit schedule property for very long period. Hence, if any partition is ordered by this court, the property residing by the 1st defendant may be allotted to this defendant as her share.

Brief Averments of the Written Statement filed by the 2nd, 3rd and 4th defendants are as follows :-

03. They admitted the relationship between the plaintiff and defendants and they have no objection to divide the suit property as 1/7 shares each.

Brief Averments of the Written Statement filed by the 5th defendant is as follows :-

04. The property in the A schedule mentioned in the plaint was allotted to late. MM. Sundaram through the partition suit in O.S.No.151/1978 and the date of decree of the said suit late. MM Sundaram was in exclusive possession and enjoyment and was exercising ownership on the property and after the death of late MM. Sundaram, his wife Tmt.Mariyayeeammal and other defendants were exercising joint ownership on the said A schedule property and was in joint possession and enjoyment of the same. However, after the plaintiff left Ooty about year of 1978 and the other brother late Inbasekaran did not take any care of their parents and being the 3rd son of the deceased MM.Sundaram this defendant who is also the last son alone took all the care and wants of MM. Sundaram and his wife late. Mariyayee Ammal.

05. Further in para 5 of the plaint is partly correct and in respect of the property mentioned in the “B” schedule property was in herited by the plaintiff’s mother and her brothers jointly and by a release deed 16.07.1987 which was registered as document No.524/1987 on the file of the Joint Registrar, Ooty. During the death of late. Mariyae Ammal with the consent and knowledge of the plaintiff and the other defendants this defendant has developed the “B” schedule property. This defendant who born in the B schedule property and his parents were also living with him in the same property, In the event this court decided for partition of the B schedule property, as for as possible the extent in which this defendant is in possession and enjoyment of the portion of the ‘B’

schedule property may be allotted to him and the remaining share in the 1/7 share in the A and B schedule may be allotted to his as the court may be decided.

Brief Averments of the Written Statement filed by the 6th to 9th defendants are as follows :-

06. This defendants have been residing in one portion of the “B” schedule properties for very long period. This defendants are totally entitled to 1/7th share of the suit schedule property that is 2.28 cents. If this court is ordered any partition, the property residing by this defendants may be allotted to this defendants as their shares.

07. On the basis of the above pleadings, the following issues are framed on 24.01.2023:-

01. Whether plaintiff is entitled to 1/7th share of the suit schedule properties especially “B” Schedule Property ?
02. Whether the plaintiff is entitled to get Preliminary Decree in respect of 1/7 share of the suit schedule properties ?
03. To what other relief's are entitled to plaintiff?.

08. During the course of Trial, The plaintiff M.S. Muthuswamy was examined as PW1. And through him, Ex.A1 to Ex.A5 were marked and PW1 was cross examined. On the side of defendants the 1st defendant namely Sarawathi was examined as DW1 and through her no exhibits were marked and DW1 was cross examined.

Issues No.01

Whether plaintiff is entitled to 1/7th share of the suit schedule properties especially “B” Schedule Property ?

09. This plaintiff has been filed a suit for partition against this defendants in respect of 1/7 shares of the suit schedule properties. According to this

plaintiff, suit "A" schedule property was allotted to his father through decree passed by this court in O.S.No.151/1978 and suit "B" schedule property was inherited by the plaintiff's mother by way of release deed executed in favour of the plaintiff's mother by her brothers on 16.07.1987. Whereas all the defendants have not denied the above said facts. However, plaintiff side averred that 5th defendant is staying in the one of the portion of the "B" schedule property and defendants 7 to 9 are staying in the remaining portion of the "B" schedule properties. In this stage, this plaintiff is claimed the partition in respect of 1/7 share in the "A" schedule as well as "B" schedule property. But 5th defendant averred that this plaintiff has left from Ooty about the year of 1988 and other brother namely late.Inbasekaran also did not take care of his parents. So that 5th defendant alone took care and wants of his father and his mother until their death. This 5th defendant was living with his parents until their death. Further the 5th defendant bornt in the "B" schedule property and also living with his parents till the death of late Mariyae Ammal. This 5th defendant has developed the "B" schedule property and he is living in that property till date. Hence, he requested that the extent which this defendant is in possession and enjoyment of the portion of the "B" schedule property may be allotted to him. However, this plaintiff also admitted through his cross examination that he has no objection to allot the property to the 5th defendant, which is in his possession. But this court is of opinioned that the actual extent of possession of the 5th defendant is not determined till date. Further now this court has to be decided that whether plaintiff and defendants have any share of the suit schedule property ?. Further the allotment of shares can be decided at the time of final decree proceedings.

10. Further the defendants 7 to 9 are also staying in the portion of the "B" schedule property and they are also claimed that the portion of the "B" schedule property enjoying by the defendants 7 to 9 may be allotted them. However as already decided that defence can be taken during the final decree. Since, "B"

schedule property is a self acquired property of the plaintiff's mother, this plaintiff is entitled to equal share with other defendants as per Section 15 of Hindu Succession Act.

Accordingly this issue is answered.

Issue No.2 :-

Whether the plaintiff is entitled to get Preliminary Decree in respect of 1/7 share of the suit schedule properties ?

11. This plaintiff has been filed a suit for partition against this defendants in respect of 1/7 share of the suit schedule property. According to this plaintiff, the suit "A" schedule property was allotted to his father namely MM. Sundaram in O.S.No.151/1978. In this regard, plaintiff side filed a commissioner report and plan related to the O.S.No.151/1978 of this court and same was marked as EX.A1. Further suit "B" schedule property was belongs to plaintiff's mother namely Mrs. Mariyae Ammal by way of gift settlement deed executed by her brothers on 16.07.1987 and the gift settlement deed was marked as Ex.A2. The defendants side also admitted the above said facts. So that the plaintiff is entitled to equal shares in the both "A" and "B" suit schedule properties. However the 1st defendant had taken defence that she is residing in one of the portion of the "A" suit schedule property for very long period with her family. So that she requested to allot that portion as her shares and same time 5th defendant also claimed that he is residing in the one of the portion of the "B" suit schedule property and defendants 7 to 9 also claimed that they are also residing the remaining portion of the "B" suit schedule property and they have claimed that the above said portion may be allotted to them. However, plaintiff also admitted during his cross examination that he has no objection to allot the above said properties which are enjoying by the defendants. But now this court has to be only determined the shares of the parties and allotment of the shares can be

decided only at the time of passing final decree. But this plaintiff admission can be taken into account at the time of final decree. In this circumstances, now this court has hold that this plaintiff is entitled to get 1/7 share of the suit schedule properties. Accordingly this issue is answered.

Issues No.03

To what other relief's are entitled to plaintiff?

12. Already this court sufficiently decided all the issues involved in the case through issues number 1 and 2. Hence, no other further relief's are needed to this plaintiff.

Accordingly the this issues is answered.

In the Result:-

- (i) This suit is allowed.
- (ii) and this plaintiff is entitled to get 1/7 shares in the suit schedule properties.
- (iii) The defendants are directed to pay the cost to the plaintiff.
- (iv) This suit is posted to 03.01.2024 for appointing an Advocate Commissioner to divide the shares in accordance with Preliminary Decree.

Dictated to the Steno-typist, transcribed by her, corrected and pronounced by me in open Court on this the 02nd day of November 2023.

SUB JUDGE,
UDHAGAMANDALAM.

LIST OF WITNESS

For the Plaintiff Side:

PW- 01 Muthuswamy

For the Defendants Side:

DW- 01 Saraswathi

LIST OF EXHIBITS

For the Plaintiff Side:

- Ex.A-1 : 06.02.1980 Certified copy of Commissioners report in OS.No.151/1978
- Ex.A-2 : 16.07.1987 Certified copy of release deed in favour of the plaintiff's mother
- Ex.A-3 : 10.02.1995 Copy of Death Certified of plaintiff's father
- Ex.A-4 : 08.10.2012 Copy of Legal heir certificate issued for the father of the plaintiff
- Ex.A-5 : - Online patta in respect of S.No.136, S.No.197 and S.No.75 and 76. (4 Nos)

For the Defendants Side: -Nil-

**SUB JUDGE,
UDHAGAMANDALAM.**

Sub Court, Udhagamandalam
Draft/ Fair Judgment

O.S.No. 204/2022

Dated 02.11.2023