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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 08TH DAY OF APRIL 2022

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.No.112 of 2021

1. Mrs. S.Sridevi,
aged 41 years,
W/o. Mr. L.Senthilkumar,
No.23/27, 1st Street,
Kaveri Salai, Gandhi Nagar,
Kodungaiyur, Chennai - 600 118.

2. Mrs. R.Maheswari,
aged 37 years,
W/o. Mr. K.Raja,
No.13/15, 2nd Street, Veerapandiyan Nagar,
Choolaimedu, Chennai - 600 094.

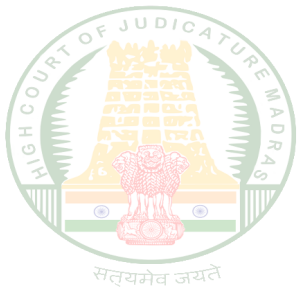
... Plaintiffs

VS

1. Mrs. R.Savithri,
aged 64 years,
W/o. Late Mr. M.Ramalingam,
No.18/17, 2nd Street,
Veerapandiya Nagar,
Choolaimedu,
Chennai - 600 094.

2. Mr. R.Manikandan,
aged 33 years,
S/o. Late Mr. M.Ramalingam,
No.18/17, 2nd Street,
Veerapandiya Nagar,
Choolaimedu,
Chennai - 600 094.

... Defendants



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Civil Suit praying that this Hon'ble Court be pleased to grant a judgment and decree in favour of the plaintiffs as against the defendants,

(a) Declaring the plaintiffs' 1/4th share each in the schedule mentioned properties by passing a preliminary decree;

(b) Dividing the schedule mentioned properties by metes and bounds and allot 1/4th share thereof to each of the plaintiffs through appointment of an Advocate Commissioner by passing a final decree;

(c) Directing the defendants to pay the plaintiffs a sum of Rs.36,00,000/- (Rupees thirty six lakhs only) towards their 1/4th share each in the mesne profits accrued from the schedule mentioned properties for the period from March, 2018 till February, 2021 and their 1/4th share each in the future rental income accrued from the schedule mentioned properties;

(d) Directing the defendants to pay the Plaintiffs the cost and expenses incurred in instituting this suit.

This Civil Suit coming on this day before this court for hearing in the presence of Mr. K.Surendar, Advocate for the plaintiffs herein and Mr. S.Senthilnathan, Advocate for the defendants herein and upon reading the plaint filed herein and the other exhibits therein referred hereto and upon

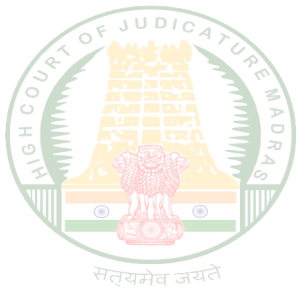


defendants having submitted that the defendants have no serious objection for partition and there is no urgency for partition also and some of the properties are outside the jurisdiction of this Court and third parties interests are involved in some of the properties mentioned in the schedule to the plaint and this Court having observed that some of the properties are outside the jurisdiction of this Court and third parties interests are involved in some of the properties mentioned in the schedule to the plaint, the defendants have neither examined any witness nor produced any document to substantiate his defence and therefore the plaintiff's claim is proved and it is ordered and decreed as follows:-

That 1. S.Sridevi and 2. R.Maheswari the plaintiffs herein, shall be entitled to 1/4th share each in the suit properties morefully setout in the Schedule hereunder.

2) That as far as mesne profit is concerned, the plaintiffs herein, shall get the same by initiating separate proceeds under order XX Rule 12 of CPC.

SCHEDULE OF PROPERTIES



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ARS

02.05.2022

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C.S.No.112 of 2021

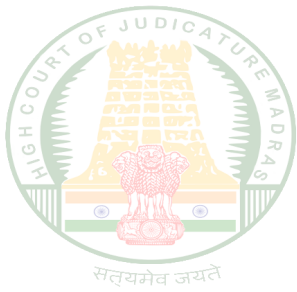
PRELIMINARY DECREE

DATED : 08.04.2022

THE HON'BLE MR. JUSTICE
P.VELMURUGAN

FOR APPROVAL : 12.05.2022

APPROVED ON : 12.05.2022



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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.04.2022

Coram:

THE HON'BLE MR. JUSTICE P.VELMURUGAN

C.S.No.112 of 2021

1.S.Sridevi

2.R.Maheswari

... Plaintiffs

VS

1.R.Savithri

2.R.Manikandan

... Defendants

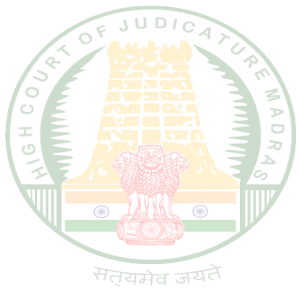
Civil Suit filed under Order VII Rules 1 of CPC R/w Order IV Rule 1 of Original Side Rules seeking for the following reliefs:

(a) Declaring the plaintiffs' 1/4th share each in the schedule mentioned properties by passing a preliminary decree;

(b) Dividing the schedule mentioned properties by metes and bounds and allot 1/4th share thereof to each of the plaintiffs through appointment of an Advocate Commissioner by passing a final decree;

(c) Directing the defendants to pay the plaintiffs a sum of Rs.36,00,000/- towards their 1/4th share each in the mesne profits accrued from the schedule mentioned properties for the period from March, 2018 till

February 2021 and their 1/4th share each in the future rental income accrued from the schedule mentioned properties;



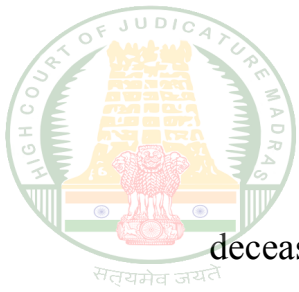
(d) Directing the defendant to pay the Plaintiffs the cost and expenses incurred in instituting this suit.

For Plaintiffs : Mr.K.Surendar

For Defendants : Mr.S.Senthilnathan

J U D G E M E N T

The first defendant is the wife and the plaintiffs and the second defendant are the children of the deceased M.Ramalingam. The said M.Ramalingam expired on 16th January 2017, leaving behind the plaintiffs and the defendants as his legal heirs. It is the case of the plaintiffs that their father, M.Ramalingam had acquired several immovable properties at various places throughout the State of Tamil Nadu, out of his self earnings, which are described in the schedule to this plaint. It is pertinent to note that some properties were purchased by their deceased father in the name of the defendants either independently or jointly with his own funds. However, they have brought only the schedule mentioned properties that were held by their father in his own name within the ambit of this suit and in case, if they learn about any other property held by their father, they reserve their right to include such properties also by seeking amendment of the plaint.



deceased Ramalingam, the plaintiffs and the defendants have jointly

inherited the schedule mentioned properties with equal share therein, in

accordance with section 8 of the Hindu Succession Act. Thus they have

derived 1/4th share each in the schedule mentioned properties and the

defendants are also entitled to 1/4th share each therein. The defendants are

presently residing in the property described as item No.1 in the schedule to

the plaint and the rest of the properties described in the schedule to the

plaint are either vacant or have been let out to various tenants/licensees and

as such, the plaintiffs are in constructive possession of the suit properties.

Thus as on date, the plaintiffs as well the two defendants are the joint

owners of the schedule mentioned properties and are in joint possession and

enjoyment of the same. The plaintiffs understand that the total monthly

rental accruing from the schedule mentioned properties is about

Rs.2,00,000/- and being the joint owners of the schedule mentioned

properties, the plaintiffs are entitled to their 1/4th share each in the rental

income accruing from and out of the schedule mentioned properties.

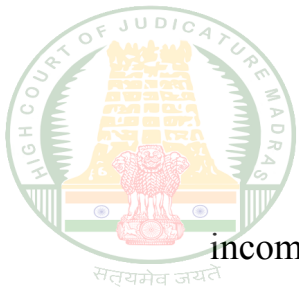
However, taking undue advantage of the sudden demise of Ramalingam and

the old age of the first defendant, the second defendant has been deliberately

misappropriating the entire rental income, with an ulterior motive of

attaining unjust enrichment. In fact, following the demise of Ramalingam,

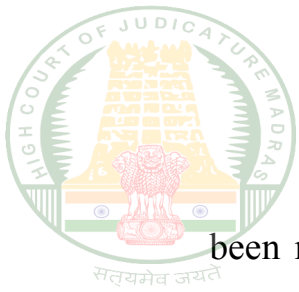
the plaintiffs had suggested to split the respective shares in the rental



income every month. However, the second defendant had stated that the same would be hectic and assured to settle the plaintiffs' shares on yearly basis. Accordingly, during January 2018, when the plaintiffs demanded the second defendant to settle the rental income for the year 2017, the second defendant had promised to settle the same within three months which never happened.

3. Further it is the case of the plaintiffs that they seriously apprehend that the second defendant is trying to alienate the schedule mentioned properties without the knowledge of the plaintiffs in a clandestine manner. Owing to the natural love and affection that the plaintiffs possess towards the defendants, they had patiently waited all these days hoping that things would change for the better. The plaintiffs' incessant efforts to set things right were rendered futile due to the recalcitrant attitude displayed by the second defendant. The plaintiffs thus constrained to issue a legal notice dated 05.10.2020 to the defendants, calling upon them to render the statement of accounts of the rental income derived from the schedule mentioned properties commencing from the month of January 2017 and pay the due share thereof and to extend their co-operation for dividing the plaintiffs' shares in the aforementioned properties by metes and bounds.

However, the legal notices that were sent by way of registered post have



been returned as unclaimed, which shows that the defendants are evading service of notice with a view to appropriate the schedule mentioned properties to themselves. The plaintiffs reiterate that they are not joint owners of the schedule mentioned properties and they are legitimately entitled to 1/4th share each therein, including the rental income derived therefrom. Thus the plaintiffs are constrained to prefer this suit seeking partition of their 1/4th share each in the schedule mentioned properties by metes and bounds and seeking their shares in the mesne profits derived out of the schedule mentioned properties. Although the plaintiffs are entitled to 1/4th share each in the mesne profits of about Rs.2,00,000/- per month from January 2017, they restrict their claim for the period from March, 2018 to February 2021 totally amounting to Rs.36,00,000/- besides their 1/4th share each in the future mesne profits.

4. The matter was referred to the learned Master for recording evidence and the first plaintiff is present and examined herself as PW1 in chief and documents marked. Though the learned counsel for the defendants partially cross examined PW1, he has not completed the cross examination of PW1.

5. The documents filed by the plaintiffs were marked as Ex.P1 to

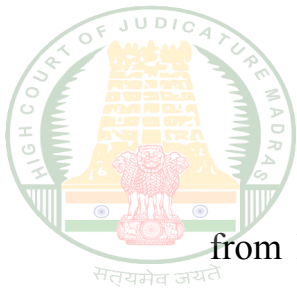


Ex.P5, namely, Ex.P1 is the death certificate of the deceased M.Ramalingam, Ex.P2 is the legal heirship certificate of the deceased M.Ramalingam, Ex.P3 is the legal notice dated 05.10.2020 sent by the plaintiffs to the defendants. Ex.P4 & Ex.P5 are the returned postal covers containing the legal notice dated 05.10.2020 sent by the plaintiffs to the defendants.

6. Learned counsel for the defendants would submit that the defendants have no serious objection for partition and there is no urgency for partition also. He would also submit that some of the properties are outside the jurisdiction of this Court and third parties interests are involved in some of the properties mentioned in the schedule to the plaint.

7. Heard and perused the records.

8. The plaintiffs have filed the suit for partition claiming that they each entitled to 1/4th share in the suit schedule properties. Admittedly, the plaintiffs are the daughters and the defendants are the wife and son of M.Ramalingam who owned the suit schedule properties from and out of his earnings. The said M.Ramalingam died on 16.01.2021 which is evidenced



from Ex.P1 and as per the legal heirship certificate marked as Ex.P2, the plaintiffs and the defendants are his only legal heirs and hence, they each are entitled to 1/4th share in the suit schedule properties.

9. Excepting for stating that some of the properties are outside the jurisdiction of this Court and third parties interests are involved in some of the properties mentioned in the schedule to the plaint, the defendants have neither examined any witness nor produced any document to substantiate his defence. Therefore the plaintiffs' claim is proved.

10. Under this circumstances, the plaintiffs are entitled to 1/4th share each and the preliminary decree is passed to that effect. As far as mesne profit is concerned, the plaintiffs can get the same by initiating separate proceeds under Order XX Rule 12 of CPC.

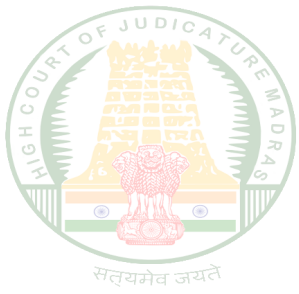
Sd/-P.V.J.
08.04.2022

List of Witnesses examined on behalf of the Plaintiffs:

PW1 – S.Sridevi

List of Witnesses examined on behalf of the Defendants:

None



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List of Exhibits marked on the side of the Plaintiffs:

<i>Exhibits</i>	<i>Nature of Documents</i>
P1	Digitally certified copy of Death certificate of M.Ramalingam dated 07.02.2017
P2	Digitally certified copy of Legal heirship certificate of M.Ramalingam dated 10.05.2018
P3	Office copy of the Legal Notice sent on behalf of the plaintiffs to the defendants dated 15.10.2020
P4	Original Returned Postal cover of 1 st defendant
P5	Original Returned Postal cover of 2 nd defendant

List of Exhibits marked on the side of the Defendants:**Nil**Sd/-P.V.J.
08.04.2022

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.