

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 21.07.2017

PRONOUNCED ON: 02.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

CS.No.572 of 2015

1. Ms.Shanmugapriya
2. Senthilkumaran

Plaintiffs

Vs

1. S.Thyagarajan
2. Anuradha

Defendants

Prayer:- This Civil Suit is filed under Order VII Rule 1 of CPC read with Order II Rule 1 of the Original Side Rules for the reliefs as stated therein.

For Plaintiffs : M/s.Shivakumar and Suresh

For Defendants : Set Exparte

JUDGEMENT

This civil suit had been filed to pass a judgement and decree, against the Defendants:-

(a) for partition of the suit properties by metes and bounds and put the 1st Plaintiff in possession in respect of her 1/4th share in the suit properties and put the 2nd Plaintiff in possession in respect of his 1/4th share in the suit properties.

(b) directing the Defendants to pay costs of the suit

2. It had been stated in the plaint that the Defendants are the parents of the Plaintiffs. The grand father of the Plaintiffs, namely,

K.Purushothaman, had created a Trust, by name, Anuradha Family Trust (AF Trust) on 27.3.1982 for the benefit of the family members, viz, the Plaintiffs and the Defendants. K.Purushothamn died on 26.5.1999. The net income of the Trust shall be divided among the beneficiaries as per Clause 7 of the Trust Deed. Out of the income from the Trust, the suit properties had been purchased in the name of the Trust. The trust expired on 26.5.2002 and thereafter, the Trust was not renewed, due to misunderstanding between the parties. The duration of the Trust had come to an end on the expiry of 20 years and hence, the beneficiaries of the Trust are entitled to get their respective share of profits in the ratio mentioned in the Trust Deed. The Plaintiffs being the coowners are in joint possession of the suit properties along with the Defendants. By various letters dated 10.1.2005, 5.3.2007 and 15.4.2010, the Plaintiffs demanded partition of the suit properties, which was denied by the Defendants. Hence, this civil suit has been filed for partition and separate possession as stated above.

3. Though the Defendants 1 and 2 were served on 22.9.2015 and 15.10.2015 respectively, no written statement had been filed by the Defendants and hence, the matter was ordered to be listed under the caption of "Undefended Board". For non filing of the Written Statement, the Defendants were set exparte and Exparte Evidence was ordered to be recorded by the order of this court dated 24.03.2017. The 1st Plaintiff had filed the proof affidavit for her chief examination on behalf of the Plaintiffs and receipt of sixteen documents as documentary evidence to prove their claim. In the Exparte

Evidence, the 1st Plaintiff had examined himself as PW.1 and marked Exs.P1 to P16 as documentary evidence in order to prove the suit claim.

4. Considering the oral and documentary evidence, viz. Ex.P1 to Ex.P16 adduced by PW.1, this Court is of the view that the plaintiffs have proved the suit claim and consequently, the Plaintiffs are entitled to 1/4th share in the suit property, as prayed for and accordingly, a preliminary decree for partition in favour of the Plaintiffs is granted with costs. Without awaiting for an application for passing of a final decree, for the purpose of inspecting the suit property and to give a proposal for allotment of 1/4th share in the suit property to the Plaintiffs, by demarcating the suit property, Mr.S.Paulpandi, Advocate, E.No.2075 of 2009, Cell No.9884767585, is hereby appointed as the Advocate Commissioner and his initial remuneration is fixed at Rs.20,000/- (Rupees Twenty Thousand Only).

02.08.2017

Index:Yes/No
Web:Yes/No
Srcm

1. List of Witnesses Examined on the side of the Plaintiffs:-

1. P.W.1 - Shanmugapriya

2. List of Exhibits Marked on the side of the Plaintiffs:-

S.No	Exhibit	Description	Date
1	Ex.P. 1	Notarised copy of the deed of declaration of private family trust	27051982
2	Ex.P. 2	Certified copy of sale deed	22041987
3	Ex.P. 3	Certified copy of sale deed	01071987
4	Ex.P. 4	Certified copy of sale deed	29061992
5	Ex.P. 5	Certified copy of sale deed	29061992
6	Ex.P. 6	Certified copy of sale deed	09071992
7	Ex.P. 7	Original letter sent by the plaintiffs to the 1 st Defendant.	10012005
8	Ex.P. 8	Original letter sent by the plaintiffs to the 1st Defendant.	05032007
9	Ex.P. 9	Original letter sent by the plaintiffs to the 1st Defendant.	15042010
10	Ex.P. 10	Original letter sent by the plaintiffs to the 1st Defendant.	20112014
11	Ex.P. 11	Original letter sent by the plaintiffs to the 1st Defendant.	
12	Ex.P. 12	Original tax receipts in respect of item (1) of the suit property.	
13	Ex.P. 13	Copy of patta in respect of item (2) of the suit property.	
14	Ex.P. 14	Copy of kist in respect of item (2) of the suit property	
15	Ex.P. 15	Cop of kist in respect of item (3) of the suit property	
16	Ex.P. 16	Chitta in respect of item (3) of the suit property	

3. List of Witnesses Examined on the side of the defendants:-

Nil

4. List of Exhibits Marked on the side of the defendants:-

Nil

02.08.2017

Srcm

C.V.KARTHIKEYAN, J.

Srcm

Pre-Delivery Judgement in
CS.No.572 of 2015

02.08.2017