



A.S.No.946 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 21.06.2023

Judgment Pronounced on : **11.07.2023**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

A.S.No.946 of 2015

and M.P.No.1 of 2015

Vasuki

.. Appellant

Versus

Kasturi

.. Respondent

Prayer : Appeal Suit filed under Order XLI Rule 1 r/w Section 96 of Civil Procedure Code to set aside the Final Decree in I.A.No.395 of 2011 in O.S.No.108 of 2008 dated 18.12.2014 passed by the Principal District Court, Villupuram.

For Appellant : Mr.S.Parthasarathy, Senior Counsel
Assisted by
Mr.P.Dinesh Kumar

For Respondent : Mrs.Kavitha Balakrishnan



A.S.No.946 of 2015

JUDGMENT

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This appeal suit is filed against aggrieved by the final decree passed in O.S.No.108 of 2008 upon considering the final decree application in I.A.No.395 of 2011 dated 18.12.2014.

2. The plaintiff and the defendant are sisters. The suit was filed, claiming 1/2 share in the various items of suit scheduled properties. Even though the parties proceeded with the trial, subsequently, towards the end of the trial, they amicably resolved the disputes and a preliminary decree by way of consent for partition the suit schedule properties item Nos.1 to 127 was passed on 07.07.2011, by agreeing to ½ share each in the suit properties. Thereafter, there seems to be no consensus in respect of dividing the items as per preliminary decree and once again, a final decree application in I.A.No.395 of 2011 was filed by the defendant in the suit.

3. An Advocate Commissioner was appointed, who after a detailed enquiry by his report allotted the 25 items of properties in the suit schedule between the parties by duly allotting one dwelling house each, one irrigable well and pump-set each. Some of the schedule items were allotted in total to either of the parties and some of the items by dividing between both of them, thereby ensuring both sides enjoyed properties of equal value. While so



allotting, preference was given to allot the properties whichever were in the enjoyment of the respective parties also.

4. Objections were filed to the Commissioner's report and finally after considering the objections a final decree was passed whereby making a few modifications in the Commissioner's Report on 18.12.2014. Aggrieved by which, the plaintiff is on appeal before this Court.

5. Heard, Mr.S.Parthasarathy, learned Senior Counsel appearing on behalf of the appellant and M/s.Kavitha Balakrishnan, learned counsel appearing on behalf of the respondent defendant.

6. Even though very many grounds were raised, during the course of the arguments, considering the relationship between the parties, this Court also directed both the parties to be present before the Court. The Court also interacted with the parties and the learned counsel tried their level best to bring in about amicable resolution of the disputes. However, still there remained minor differences between the parties and therefore, no judgment on consent could be recorded in by this Court. But, however most of the issues were resolved leading to the arguments being restricted only in respect of a few claims which are made by both the parties.

7. Mr. S.Parthasarathy, learned Senior Counsel submitted that there are totally four claims which are made by the plaintiff. Even though one well



each was allotted, unless the plaintiff is permitted to draw water even from the well allotted to the defendant, it would be difficult for the plaintiff to irrigate the lands which are nearer to the well allotted to the defendant. To that extent, he would submit that the judgment and decree needed interference. Similarly, he would submit that there is inequality in respect of the house property allotted between the parties. Thirdly, he would submit that while the Court has divided the extents, in respect of many of the extents allotted to the plaintiff, there is no pathway and the defendant has to give pathway for the access to those agricultural lands. Finally and more importantly, learned Senior Counsel would submit that an extent of 1 Acre and 76 Cents being item No.24 in Survey No.33/7 was allotted by the Advocate Commissioner to the plaintiff. It was contended on behalf of the plaintiff that the value in respect of the said land is on the lower side and therefore, the prayer of the plaintiff was to allot another extent which would fetch more value. While the trial Court accepted the contention of the plaintiff and allotted the said item of 1 Acre and 76 Cents to the defendant, no other equivalent extent was given to the plaintiff. To that extent, the judgment and decree needs interference.

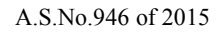
8. Mrs. Kavitha Balakrishnan, learned counsel appearing on behalf of the respondent would submit that as far as the house property is concerned, the concerned houses in which the parties are residing and in occupation have



been allotted to the respective sisters. While one house is relatively larger in the extent, the other one is relatively new and the super structure is well built and also has access on both sides. Similarly, one well each has been allotted to either side and no difficulty, whatsoever can be claimed with the present modern day technology of laying PVC pipelines being available to take water to the respective extents of lands. She submitted that as far as the claim of pathway is concerned, both parties have difficulties in respect of some of the items. Both parties may need way through the land of the other, whenever laden vehicles with harvest etc., are pass by. As far as the extent of 1 Acre 76 Cents are concerned, even though the trial Court had not given anything in addition, earmarking three other extents, learned counsel would submit that 90 Cents is now being offered by the defendant.

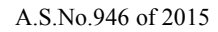
9. I considered the rival submissions made on the either side and perused the material records of the case.

10. As far as the contention regarding the houses are concerned, on a perusal of the oral and documentary evidence on record and also upon interaction with the parties, it is found that the respective house in which they are in occupation has been allotted and the Advocate Commissioner had taken into account overall value while allotting rest of properties.



When the parties are at loggerheads and not in good terms once again making as well as common well would only lead to future disputes. On the other hand, with the advantage of the present day technology of PVC tubes as well as pipes which are available for irrigation by connecting it either temporarily or by laying it underneath the earth, the distance between the lands allotted and the well can no longer be a criteria for redoing the entire exercise of partition. In any event, both parties have extents which are nearer their respective wells and also farther from their respective lands. Therefore, it is for them to look out in what manner they are going to irrigate those extents which are not abutting the wells. Therefore, the same is not a ground to interfere in the final decree passed by the trial Court.

11. As far as the pathway is concerned, in respect of agricultural lands, wherever the land of the parties is land locked and not abutting to any cart track or pathway or road, the principle which is applicable in respect of agricultural land is that whenever necessity arises to remove the harvest or to carry on the agricultural activities by way of tractor or bullock cart, then both parties, the plaintiff and the defendant shall not object to the same for the laden vehicles, tractors, carts to pass by their respective lands. The user has to take care that to cause minimum damage to standing crop if any. It is not necessary



13. Now, the only issue remains is in respect of 1 Acre and 76 Cents. Even though the other 90 Cents of land was offered, the same was not accepted. Even though Mrs.Kavitha Balakrishnan, the learned counsel, would argue that the said 90 cents would be more convenient and would be of the same value, I am afraid that in the appellant jurisdiction, the said substitution can be done. When the Advocate Commissioner after visiting the spot and conducting a detailed enquiry and after taking into account the good and bad, fertile and non-fertile soil, accessibility and non-accessibility and overall value has allotted the said extent of land in Survey No.33/7 to the plaintiff and the trial court by oversight while re-allotting the same to the defendant, did not consider any other equal property to the plaintiff, I hold that the same is an



error and the said extent of 1 Acre and 76 Cents shall stand allotted to the plaintiff as contained in the Commissioner's report. To the above extent the judgment and decree of the Trial court shall stand modified.

14. In the result,

- (i) A.S.No.946 of 2015 is allowed in part.
- (ii) Judgment and decree of the trial court in I.A.No.395 of 2011 in O.S.No.108 of 2008 dated 18.12.2014 is modified to the extent as follows:
 - (a) Item No.24 of the suit property admeasuring an extent of 1 Acre and 76 Cents comprised in S.No.33/7 shall stand allotted to the plaintiff.
 - (b) The parties will be entitled to the necessary easement of walking/bringing the laden vehicles/ ploughing vehicles/carts etc., and cattle to their respective extents through the extent allotted to the other without causing any damage or by causing only minimum damage to the standing crops if any, in respect of all the properties allotted to the respective parties wherever there is no other pathway or public access to their extents;
 - (c) In all other respects, the judgment and the decree of the trial Court shall stand confirmed.



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(iii) There shall be no orders as towards costs. Connected Miscellaneous

WEB COPY petition is closed.

11.07.2023

Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no
mpl

To

1. The Principal District Court,
Villupuram.
2. The Section Officer,
V.R. Section,
High Court of Madras.



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D.BHARATHA CHAKRAVARTHY, J.,

mpl

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