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A.S.No.332 of 2018

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.07.2024

CORAM:

THE HONOURABLE MR JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR JUSTICE R.SAKTHIVEL

A.S.No.332 of 2018
and
C.M.P.Nos.8375 & 8376 of 2018

- 1.G.Poongavanam
- 2.G.Ramanujam (Died)
- 3.G.Madhavan
- 4.R.Jayavani

[The 4th appellant is brought on record as the legal representative of the deceased 2nd appellant vide order of the Court dated 01.07.2024 made in CMP.No.12128/2024]

...Appellants

Vs.

G.Adimulam

...Respondent

Prayer: Appeal filed under Section 96 of the Code of Civil Procedure read with Order XLI(1) and (2) of the Code of Civil Procedure, to set aside the judgment and decree dated 21.02.2018 made in O.S.No.139 of 2011 on the



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file of the Additional District Judge, Chingelput consequentially allow this appeal.

For Appellants : Mr.T.S.Vijaya Raghavan
For Respondent : Mrs.Hema Sampath, Senior Counsel
for Mr.S.Mohanasundararajan

J U D G M E N T

(Judgment of the Court was delivered by **R.SUBRAMANIAN, J.**)

The appellants are aggrieved by the decree for partition granted in O.S.No.139 of 2011.

2. The plaintiff sought for partition and separate possession of his 1/4th share in the property contending that though the property was purchased in the name of the 1st defendant, who was the eldest brother of the parties, on 19.05.1980 the funds were contributed by all the four brothers and an understanding was reached between them on 23.05.1980 regarding the enjoyment of the property, which was evidenced by a Koor-Chit. As per the said document, the parties have divided the property into four plots with a 20 ft. passage in the middle. While the North-Western portion was allotted to



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the plaintiff the 3rd defendant was allotted North-Eastern portion. Access to them was provided through 20 ft. passage from Vembuli Amman Koil Street on the South. The passage measured 20 ft. East-West x 90 ft. North-South, equivalent to 6.1 m. East-West x 29.5 m. North-South. Claiming that this understanding is sought to be flouted the plaintiff sued for partition of his 1/4th share with a right of access through the common passage.

3. The suit was resisted by the defendants contending that the arrangement dated 23.05.1980 itself evidences a partition between the parties and pursuant to the same, revenue records have also been mutated and patta has been granted to the lane portion in the name of all the four brothers. It was the further contention that in view of the above no decree for partition is necessary.

4. On the above pleadings the learned trial Judge framed the following issues:-

1. தாவாவிற்கான எழுழுலம் இல்லை என பிரதிவாதிகள் கூறுவது சரியானதா?
2. பிரதிவாதிகள் கூறுவது போல் 23.5.1980 தேதியிட்ட



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குடும்ப ஏற்பாடு உண்மையானதா?

3. வாதி, பிரதிவாதிகள் பெயரில் எழுதிக்கொடுத்த 17.9.1981

தேதியிட்டதானப்பட்டிரம் உண்மையானதா?

4. வாதி கோரியபடி தாவா சொத்தினை 3 சரி பாகங்களாக பிரித்து அதில் ஒரு பாகம் வாதிக்கு வழங்கிடக் கோரியும் அதனுடன் வாதிக்கும், 3ம் பிரதிவாதிக்கும் மட்டும் பாதை அமைத்தும் அந்த பாதையில் வாதிக்கு 50% உரிமை கிடைக்கத்தக்க வகையில் பிரிக்கக் கோரிய முதல் நிலை தீர்ப்பாணை பெறத் தகுதிபடைத்தவரா?

5. வேறு என்ன பரிகாரங்கள்?

The issues were re-cast as follows:-

1. வாதி கோரியபடி தாவா சொத்தினை 4 சரி பாகங்களாக பிரித்து அதில் ஒரு பாகம் வாதிக்கு வழங்கிடக் கோரியும் அதனுடன் வாதிக்கும், 3ம் பிரதிவாதிக்கும் மட்டும் பாதை அமைத்தும் அந்த பாதையில் வாதிக்கு 50% உரிமை கிடைக்கத்தக்க வகையில் பிரிக்கக் கோரிய முதல் நிலை தீர்ப்பாணை பெறத் தகுதிபடைத்தவரா?

2. வேறு என்ன பரிகாரங்கள்?

5. The learned trial Judge found that the document styled as 'குடும்ப பாகப்பிரிவினை அக்ரிமெண்டு' dated 23.05.1980 was not acted upon and



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therefore the property remains undivided. On the said conclusion, the learned trial Judge granted a decree for partition. He also issued a further direction that the North-West portion over which the plaintiff has made a construction should be allotted to him in the final decree proceedings. The learned trial Judge however went on to observe that the common lane measuring 20 f. x 90 f. reserved as passage exclusively belongs to the plaintiff and the 3rd defendant who were allotted the North-West and North-East portion respectively under the document dated 23.05.1980 marked as Ex.A2. On the above conclusion, the learned Judge granted a preliminary decree for partition. Aggrieved the defendants are on appeal.

6. Mr.T.S.Vijaya Raghavan, learned counsel appearing for the appellant would submit that the defendants are only aggrieved by the observation of the learned trial Judge that the pathway would belong to the plaintiff and the 3rd defendant, which according to him, divested the interest of the defendants 1 and 2 over the pathway which was otherwise been kept in common even by the arrangement dated 23.05.1980, which is the basis of the plaintiff's suit.



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7. Ex.A2 is an unregistered document which is titled as 'குடும்ப பாகப்பிரிவினை அக்ரிமெண்டு'. Though the said document is unregistered the same has been made the basis of the plaintiff's suit and the defendants also relied upon the very same document. The said document contains a specific recital to the effect that the passage belongs to all the four brothers in common. It is also seen from Ex.A3 building plan that has been obtained by the plaintiff, this 20 ft. passage has been shown as 20 ft. wide common passage. In fact, the building plans for all the buildings put up by the defendants in the entire 42 cents of land have been produced as Exs.B5, B12 and B20. In all these documents the passage has been shown as a common passage. The Town Survey Field Register for the passage alone in S.No.11/5 has been marked as Ex.B4, which stands in the name of all the four brothers viz., plaintiff and the defendants. It is therefore clear that the parties intended the pathway to be common to all the four brothers and such intention was reflected in almost all the documents relating to the property. Therefore, the learned trial Judge was not right in concluding that the pathway belongs to the plaintiffs and the 3rd defendant in common. The



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other defendants viz., the defendants 1 and 2 would also have a right over the same. Even in the plaint there is no allegation that the defendants are attempting to either encroach upon the pathway or build over it, so as to prevent access of the plaintiff and the 3rd defendant. In the light of the above, it is clear to our mind that the observation of the learned trial Judge to the effect that the pathway belongs only to the plaintiff and the 3rd defendant is uncalled for and cannot be sustained.

8. Mrs.Hema Sampath, learned Senior Counsel appearing for the plaintiff/ respondent would however submit that if the other two defendants who have access to their respective property from the main road are allowed to access their property through the pathway, then there is every possibility of them putting up obstruction therein, so as to prevent the plaintiff and the 3rd defendant from enjoying the property.

9. Even though there is no allegation to that effect in the plaint, we see some justification in the apprehension. We therefore set aside the observation of the learned trial Judge which restricts the title to the pathway only on the plaintiff and the 3rd defendant. We make it clear that the



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pathway will be common to all the four brothers and none of them can claim exclusive right over the same. It is also made clear that the pathway should be maintained as a pathway without any encroachment thereupon and neither of the parties will be entitled to obstruct the user of the same by the others.

10. This appeal is disposed of with the above observations while sustaining the preliminary decree for partition. No costs. Consequently, the connected miscellaneous petitions are closed.

(R.SUBRAMANIAN, J.)

(R.SAKTHIVEL, J.)

08.07.2024

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Index : No

Internet : Yes

Neutral Citation : No

Speaking order

To

The Additional District Judge,
Chingelput.



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