



WEB COPY



A.S.(MD)No.200 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.06.2024

CORAM:

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

A.S.(MD)No.200 of 2023

and

C.M.P.(MD)No.11333 of 2023

Ravikumar

...Appellant

Vs.

1.Sudha

2.Sumathi

...Respondents

PRAYER: This Appeal Suit filed under Section 96 of C.P.C., to set aside the judgment and decree passed in I.A.No.87 of 2021 in O.S.No.103 of 2016 on the file of Principal District Judge, Dindigul, dated 16.02.2023.

For Appellant : D.Venkatesh

For R1 : Mr.S.Ramasamy

For R2 : Mr.P.Mani Anandh

JUDGMENT

The present First Appeal is filed against the judgment and decree passed in I.A.No.87 of 2021 in O.S.No.103 of 2016. The suit was filed by the plaintiff namely Sudha for partition against the defendants Ravikumar and Sumathi. The



A.S.(MD)No.200 of 2023

plaintiff and the defendants are siblings. Originally, the suit property belonged to the father of the plaintiff and defendants who died on 24.11.2011. Both father and mother of the plaintiff and defendants died intestate.

2. The contention of the plaintiff is that after the demise of the parents, the property was under joint possession and enjoyment. Due to the dispute between the plaintiff and the defendants, the plaintiff claimed 1/3rd share in the property. The first defendant Ravikumar filed written statement and additional written statement stating that Item No.1, 2, 5, 6, 7, 8, 9 (except F) and 11 were purchased by the father. The 2nd defendant Sumathi had also filed written statement and had admitted the relationship. And also admitted the fact that the properties were purchased by the father and all the siblings are entitled to equal share.

3. Based on evidence and the deposition, the preliminary decree was passed wherein it was directed to divide the properties into three shares and allot one share to the plaintiff and other two shares to the two defendants. Based on the said preliminary decree, I.A.No.87 of 2021 was filed for passing final decree. In the meanwhile, against the said preliminary decree, the first defendant Ravikumar had filed A.S.No.124 of 2021 and the same was disposed of, vide judgment, dated 13.08.2021, wherein it was recorded that I.A.No.87 of 2021 was already filed and



the same was directed to be disposed of within a period of six months. Now, in I.A., based on the Commissioner's report, all the properties are divided among the three persons. However, regarding three wells and two bore wells, there is a dispute among the parties again.

4.This Court directed the parties to settle the issue among themselves regarding the wells and the bore wells but the parties could not settle among themselves and the dispute was persisting. Hence, this Court heard the parties on merits.

5.This Court is of the considered opinion since there are three wells, each sibling shall have one well. The first well is in Survey No:33/2C is allotted to the plaintiff Sudha. Another well which is situated in Survey No.45/1D is allotted to the first defendant Ravi Kumar. The other well situated in Survey No:33/1B3 is allotted to the second defendant Sumathi.

6. As far as the bore wells are concerned, the bore wells are situated in Survey No:45/1B and Survey No:33/1B. All the three parties are entitled to 1/3rd share in the bore wells, i.e., 2 days for each party, however on Sunday the bore wells shall not kept inoperative. On every Monday and Tuesday, the plaintiff



A.S.(MD)No.200 of 2023

Sudha is entitled to the use the water from the bore wells. On every Wednesday and Thursday, the first defendant Ravikumar is entitled use the water from the bore wells. On every Friday and Saturday, the second defendant Sumathi is entitled to use the water from the bore wells. On every Sunday, none of the parties are entitled use the water from the bore wells and the bore well shall be kept inoperative. The allotment of days to the parties to use the water from the bore wells is same for the two bore wells.

7. For approaching the bore well situated in Survey No:45/1B, the parties are entitled to pathway in Survey No:45/1B. The plaintiff Sudha is entitled to the land in Survey No:45/1B, however the plaintiff shall grant pathway and permit the defendants to use the pathway so as to approach the bore well. Ten feet pathway shall be permitted by the plaintiff to the defendants. It is made clear that the permission is only for usage of pathway alone but the land belongs to the plaintiff only.

8. Likewise, another bore well is situated in Survey No:33/1B which is allotted to the first defendant Ravikumar. For this land also, the other two parties namely Sudha and Sumathi are entitled to pathway. It is made clear that the land belongs to Ravikumar but the pathway shall be used by the other two parties. Ten



A.S.(MD)No.200 of 2023

feet pathway shall be permitted by the first defendant Ravikumar to Sudha and Sumathi.

9. Further the plaintiff Sudha submitted that in the entrance, for a limited distance a narrow pathway has been allotted to her, hence she is seeking more space. However, while dividing the properties, the properties were divided equally. Therefore, if that is disturbed, a situation would arise that the plaintiff would be getting more land. Therefore, this Court is declining the same to reallocate the land among the parties. However, the plaintiff is entitled to pathway in the entrance until 45 feet wherein the plaintiff is entitled to use as pathway only. To be precise the first defendant's land in the entrance shall be used by the plaintiff but it is made clear that the land belongs to the 1st defendant only and further it is made clear that the plaintiff is entitled to use the same as pathway only and the plaintiff cannot lay any claim over the land which belongs to Ravikumar.

10. The next claim is on the 3 cents of land wherein the house is situated in the said 3 cents belongs to first defendant and the second defendant. Another land admeasuring 1.25 cents wherein thatched roof house is situated is allotted to the plaintiff. Since the plaintiff is getting only 1.25 cents instead of 1.5 cents, in order to compensate the same, the first defendant and the second defendant shall pay Rs.4,00,000/- (Rs.2,00,000/- by Ravikumar and Rs.2,00,000/- by Sumathi) to the



A.S.(MD)No.200 of 2023

WEB COPY

11. In future, if the plaintiff and the defendants had intended to sell the properties, the defendants and the plaintiff shall give first preference to the said properties. If the parties decline to purchase the same, then the parties shall sell the properties outside. With the above said directions and clarification, the first appeal is disposed of. The plaintiff and the defendants shall approach the surveyor and divide the properties as stated supra and the process shall be completed within a period of one month from the date of receipt of a copy of this judgment.

12. With the above said directions, the appeal suit is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes

Tmg



A.S.(MD)No.200 of 2023

To

1. The Principal District Judge,
Dindigul.
2. The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



A.S.(MD)No.200 of 2023

S.SRIMATHY, J.,

Tmg

A.S.(MD)No.200 of 2023

03.06.2024