

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.02.2017

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

Second Appeal No.122 of 2017

and

C.M.P.No.2563 of 2017

M.Kamaraj ... Appellant/1st Defendant

Vs

1.B.Rajamanickam ... 1st respondent/Plaintiff

2.M.Paneerselvam

3.Prakash

... Respondents 2 & 3/Defendant 2 & 3

Second Appeal filed under Section 100 C.P.C. against the judgment and decree dated 22.04.2016 made in A.S.No.223 of 2015 on the file of the VII Additional City Civil Judge, Chennai, thereby confirming the final Judgment and decree passed by the VIII Assistant City Civil Judge, Chennai in I.A.No.17394 of 1993 in O.S. No 5790 of 1986 dated 01.04.2014.

For Appellant ... Mr.A.Chidambaram

JUDGMENT

This appeal has been preferred by the first defendant in the suit against the final decree granted by the trial Court, which in turn, was confirmed by the lower appellate Court. Seeking to reverse the concurrent finding rendered by the Courts below in decreeing the suit, the appellant has come up with this second appeal by raising the following substantial questions of law:

1.Are not the Courts below wrong in law in ordering partition of the suit property while the suit property cannot be divided by metes and bounds being a small one having a frontage of 25 feet since after division each portion will have only 12.10 1/2 of frontage rendering it impossible for either party to enjoy their respective shares conveniently?

2.Whether the judgment and decree of the Courts below are bad in law in not ordering sale of the suit property in the facts and circumstances of the case?

2.Learned counsel appearing for the appellant submits that the suit property is not divisible and therefore, the findings rendered by the Courts below would require a re-look. This Court is afraid that such contention cannot be accepted for more than one reason. The learned Advocate Commissioner drawn up two plans. The trial Court, after finding that Plan-2 cannot be given effect to, accepted Plan-1. As per Plan-1, portion B was demarcated and allocated to the plaintiff and Portion A was given to the defendants. The lower appellate Court also has found that the methodology adopted by the trial Court is just and proper as Plan-2 involves unequal distribution of area.

3.In such view of the matter, this Court does not find any reason to hold that the suit property is not divisible. There is no substantial question of law involved, warranting interference, as both the Courts have considered the report of the learned Advocate Commissioner, which was in tune with the concluded final decree, granted in favour of the plaintiff in the suit, which has been laid in the year 1996. Accordingly, the second appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The VII Additional Judge,
City Civil Court, Chennai.
 2. The VIII Assistant Judge,
City Civil Court, Chennai.
 3. The Section Officer,
V.R. Section
High Court
Madras
- +1 CC to M/s. A. Chidambaram, Advocate sr 10505

S.A.No.122 of 2017

CP (CO)
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