

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBRAMANIAN

A.S.No.201 of 2004

1.Janakiammal
2.Velumani
3.Manonmani

... Appellants/Defendants 1 to 3
/Respondents 1 to 3

Vs

1.Subbiah Gowder
2.Viswanathan

... Respondents/Plaintiff/1st
Respondent/4th Defendant/
4th Respondent

This appeal is filed under 96 C.P.C. against the petition and order made in I.A.No.1387 of 1999 and O.S.No.613 of 1992 dated 22.10.2002 on the file of the 2nd Additional Subordinate Judge of Coimbatore.

For Appellants : Mr.M.Baskar
For Respondents 1 & 2 : Mr.A.Kandasamy

J U D G E M E N T

The respondents 1 to 3/defendants 1 to 3 are the appellants. The suit in O.S.No.613 of 1992 was filed by the 1st respondent herein seeking partition and separate possession of 1/3rd share in the suit property and a preliminary decree came to be passed on 28.01.1999. The plaintiff filed an application in I.A.No.1387 of 1999 for passing of final decree. The Trial Court namely 2nd Additional Sub Judge, Coimbatore appointed a Commissioner and the Commissioner had suggested three modes of division.

2. The petitioner and the 4th respondent agreed for the division as per 1st mode suggested by the Commissioner. The appellants, who were respondents 1 to 3 filed their objection regarding the allotment.

3. The method of allotment suggested by the Commissioner was not seriously objected to and it is also borne out from the records that the 1st mode of allotment was based on the enjoyment of the properties by the parties and the learned Trial Judge has also recorded that the respondents 1 to 3, the appellants herein would not have any objection for such allotment.

4. In view of the same, the learned Trial Judge made allotments as per the 1st mode suggested by the learned Advocate Commissioner. Aggrieved by the said allotment, the appeal has been preferred.

5. I have heard Mr.M.Baskar, learned counsel appearing for the appellant and Mr.A.Kandasamy, learned counsel appearing for the 1st respondent/plaintiff. The 2nd respondent has neither entered appearance through counsel nor does he appear in person, though his name has been printed in the cause list.

6. Mr.M.Baskar learned counsel for the appellants would contend that the Trial Court has erred in allotting the properties as per the report of the Commissioner.

7. There is no dispute with regard to the allotment of third item which were marked as IIIA, IIIB, IIIC in the Commissioner's plan. The main contention is with reference to allotment of items marked as IA 1B 1C and IIA, IIB, IIC. The Commissioner in his report has suggested allotment of alternate plots. The Commissioner made such suggestion in view of the fact that the common well is in the plot that is situated on the North East portion which is marked as IC. The commissioner has also stated that the value of the property varies between plots on the West and East.

9. The said factual position on which the allotment has been made by the Commissioner has not been seriously objected to. The Learned counsel for the appellants would contend that the appellants have purchased a portion of the plot marked as II-C from the legal representatives of the 4th respondent's brother and therefore he seeks exchange of plot IIA allotted to him with plot IIB allotted to respondents 1 to 3. The respondents 1 to 3 are not willing for such exchange. Unless the appellants have made out the cause of prejudice by the mode of allotment made by the Trial Court, I do not think that I could interfere with the allotment made by the Trial Judge.

10. In view of the above, the appeal is dismissed confirming the judgement and decree of the Trial Court. There will be no order as to costs in this appeal.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

vk

To

The 2nd Additional Subordinate Judge,
Coimbatore.

+lcc to Mr.M.Srividhya, Advocate, S.R.No.9238

+lcc to Mr.M.Baskar, Advocate, S.R.No.9113

A.S.No.201 of 2004

GJ(CO)
CA(03/04/2017)



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