

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2018

CORAM: THE HONOURABLE Mr.JUSTICE N.SESHASAYEE

A.S.No.80 of 2017
and
C.M.P.No.3381 of 2017

1.K.P.Uthirasamy
2. K.P.Boopathy

... Appellants/Respondents 1 & 2

Vs

1. V.Janaki
2. Palaniammal ... Respondents 1 & 2/Petitioners
3. Mylathal
4. Easwari ... Respondents 3 & 4/Respondents 3 & 4

Prayer :- First Appeal filed under Section 96 of C.P.C., against the Order and Decree dated 09.09.2016 made in I.A.No.511 of 2012 in O.S.No.790 of 2004, on the file of the learned V Additional District Judge, Coimbatore in passing the final decree in suit for partition.

For Appellants : Mr.D.Ravichander

For Respondents : Mr.S.Parthasarathy, Senior Counsel
for Mr.C.Veera Raghavan [R1 to R3]

: Mr.A.Tamilvanan [R4]

JUDGMENT

This appeal is preferred by the respondents 1 and 2 / defendants 1 and 2 in I.A.No.511 of 2012 in O.S.No.790 of 2004 on the file of V Additional District Court, Coimbatore. In the suit laid for partition, the trial court has passed a preliminary decree for 1/6 share, in favour of each of the sharers. Pursuant to the preliminary decree passed, two plaintiffs filed I.A.No.511 of 2012, in which, the court below has passed a final decree on 09.09.2016. Parties would be referred to by their rank before the trial Court.

2. There are three items of properties, of which parties have

arrived at some consensus. The court below has appointed a Commissioner who has made alternate suggestion for each of the two items of properties and an alternative option for the third item of property. The details thereof are tabulated below:

Item No.	Details		Commissioner's Option	Court's Option
	S. No	Extent		
1	782/2, Chettipalaya m Village	2.10 Acres	A	B
			B	
2	409/1, 410/1B, Sarkar Agrahara Vellalur Village	1.60 Acres	A	B
			B	
3	350/2, 351/1 and 351/3, Sarkar Agrahara Vellalur Village		A	C
			B	
			C	

3. So far as the first two items of properties are concerned, the essential difference was regarding the width of the pathway shown in plan-B by the Commissioner. While the Commissioner has suggested that the pathway shall have a width of 7.0 metres, parties by consensus have now reduced it to 3.03 metres, and sought a modification of the final decree to that extent. Since there is consensus between the parties, this Court now reduces the width of the pathway as shown in plan-B in each items of 1 and 2, from 7.0 meters to 3.03 metres.

4. So far as Item No.3 is concerned, the Court has opted for plan-C. Here, the properties do not lie contiguously, but in three blocks. It is seen from the Commissioner's plan-C, which, it must be stated, appears to be incomplete in some details, a road runs from south-west towards north-east, and one block of land lies on the south with substantial road frontage, whereas the other block of land shown as plots D, E and F, do not appear to abut the main road.

5. The learned counsel for the appellant submitted that the Commissioner has only tried to adjust the extent but has ignored the valuation of the property which the road frontage would impact. This would imply that the 3rd item of property as has been divided under the final decree do approximate equal value.

6. This Court finds merit in the said submission, and necessarily the case has to be remanded back to the court below, as regards Item No.3 in S.No.350/2, 351/1 and 351/3 of Sarkar Agrahara Vellalur Village to effect a fresh metes and bounds partition on the basis of extent, value and other advantages..

7. Accordingly, this appeal is partially allowed, as regards Item Nos. 1 and 2 in the manner indicated in the above paragraph No.3. The final decree as regards Item No.3 is set aside and the case is remanded back to the trial court. The trial court is required to appoint a Commissioner, preferably the same Commissioner appointed earlier, to visit the property to make a fresh suggestion based on the parameters indicated above. The trial court is further directed to hear the parties on either side, before instructing the Commissioner. In the mean time, the trial court is also required to explore the possibilities of certain decree of settlement between the parties. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ssn

To:

1. The V Additional District Judge, Coimbatore.

+1cc to Mr.D.Ravichander, Advocate, S.R.No. 51589

+1cc to Mr.C.Veeraraghavan, Advocate, S.R.No. 51267

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KGK(CO)
GN(22/10/2018)

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