

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2018

CORAM

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

A.S.No.540 of 2016
and
C.M.P.No.13319 of 2016

1. Jameela
2. Maimoonath
3. Ismail
4. Mashitha
5. Aushik
6. Ayisha
7. Irfan ... Appellants/Defenants 6 to 12

Vs.

1. Abbas, M. ... 1st Respondent /Plaintiff
2. Mammu, M.
3. Shareefa, M.
4. Jameela, M.
5. Sainaba, M.
6. Zubaida, M. ... Respondents/Defendants 1 to 5

Prayer: This Appeal Suit is filed under Section 96 of Civil Procedure Code r/w. Order 41 Rule 1 of C.P.C., against the judgment and decree dated 28.09.2015 made in I.A.No.528 of 2014 in O.S.No.9 of 2014 on the file of the Subordinate Judge, Mahe.

For Appellants : Mr.K.Venkatasubban

For Respondents : No Appearance

JUDGMENT

This appeal is preferred by the respondents 6 to 12 against a final decree passed in a partition suit in I.A.No.528 of 2014 in O.S.No.9 of 2014.

2. The total extent of property is 27.50 ares in Mahe. The trial court has appointed one Mr. Anas Gaffoor, as Advocate Commissioner, who suggested mode of division of the property among various sharers. He had filed his report and this was marked as Ext.C1 dated 28.04.2015.

3. The appellants herein were originally set ex-parte by the trial court. After the Commissioner has filed his report, they came up with an application in I.A.No.214 of 2015 for setting aside the ex-parte order passed in I.A.No.528 of 2014 and the said application was allowed on 23.06.2015. The appellants reported that they have no objection for passing the final decree, but reserved their right to file objections to the Commissioner's report. The trial court has granted them the time for filing objection, and on 12.08.2015, the appellants have preferred their objection. Subsequently, on 28.09.2015, final decree was passed by the trial court.

4. The only objection raised by the learned counsel for the appellants is that the suit property is located in a hilly terrain and that the Commissioner has valued the entire property at Rs.50,000/- per cent, irrespective of how the property is located. He also submitted that the order came to be passed on the date on which the matter was posted for consideration, and no opportunity was granted to them to cross examine the Commissioner on their objections.

5. The respondents have been served but they have not entered appearance.

6. On perusing the notes paper in I.A.No.578 of 2014, this Court finds the following entries :

Sl.No.	Dates	Events
1	06.07.2015	For objection, time extended till 20.07.2015.
2	20.07.2015	R6 to R12 paid court fees in separate allotment of their share. For objections to Commissioner's Report. Call on 10.08.2015.
3	10.08.2015	For objections to Commissioner's Report. Call on 12.08.2015.

Sl.No.	Dates	Events
4	12.08.2015	For objections to Commissioner's Report. Objections filed by R6 & R12. For objection of others, call on 19.08.2015.
5	19.08.2015	For objections, if any, call on 02.09.2015.
6	02.09.2015	For objections, if any, call on 10.09.2015.
7	10.09.2015	For objections if any, call on 18.09.2015 finally.
8	18.09.2015	For objections, if any, call on 22.09.2015.
9	22.09.2015	No objections filed by petitioner and R1. Heard both. For consideration, call on 28.09.2015.

7. Perusing the objection filed by the appellants, it is evident that they have taken a strong objection to the valuation made by the Advocate Commissioner, and on going through the notes paper of the trial court, this Court finds that the trial court does not appear to have granted adequate opportunity to the appellants to cross examine the Commissioner on his mode of valuation and appeared to have accepted the Commissioner's report in entirety without reference to the objection on valuation filed by the appellants.

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8. This Court finds merit in the submission of the learned counsel for the appellants and accordingly, set aside the final decree passed by the trial court and remand the matter back to the trial court, granting an opportunity to the appellants herein to cross-examine the Commissioner on the mode of valuation. If the Court finds the Commissioner's mode of valuation is arbitrary, it may direct the same Commissioner or appoint a fresh Commissioner as the circumstances may warrant to revalue the property, and pass a final decree based on the same. The entire exercise shall be concluded within a period of six (6) months from the date of receipt of a copy of this

Order. With the above direction, this Appeal Suit is allowed. No costs.

Sd/-

Assistant Registrar(CS viii)

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Sub Assistant Registrar

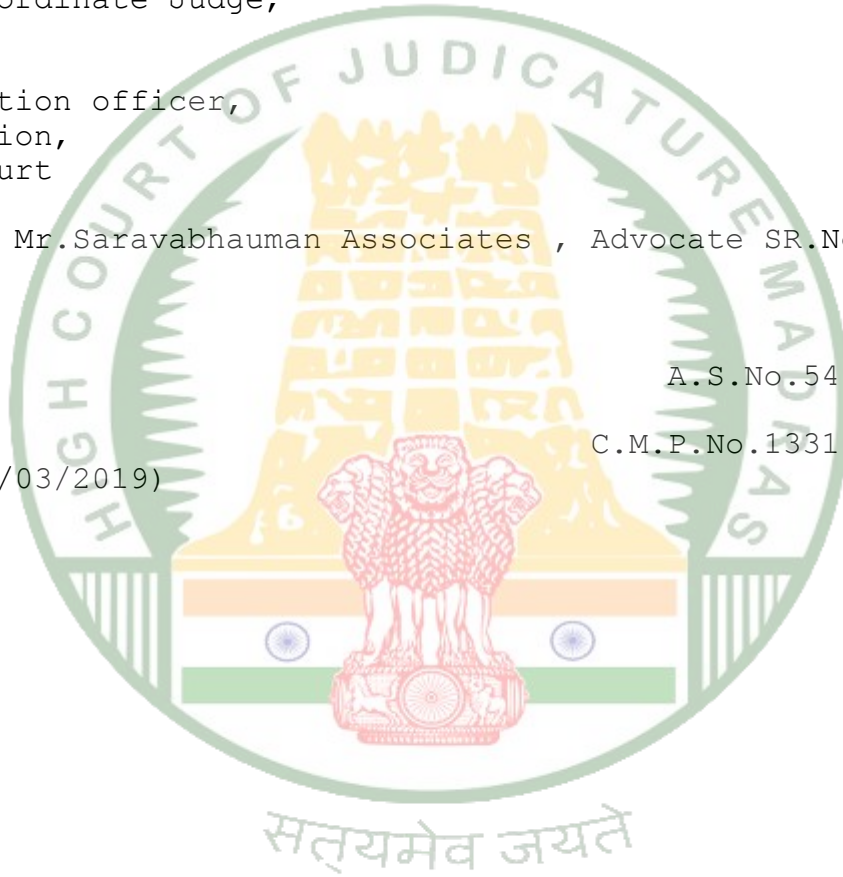
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To
The Subordinate Judge,
Mahe.

The section officer,
VR Section,
High court
Madras
+1cc to Mr.Saravabhauman Associates , Advocate SR.No. 89293

A.S.No.540 of 2016
and
C.M.P.No.13319 of 2016

A.SK(18/03/2019)



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