

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 30.01.2018

Delivered on: 05.02.2018

CORAM

THE HONOURABLE MR.JUSTICE A.SELVAM

and

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

Appeal Suit No.749 of 2010
and
M.P.No.1 of 2010

1.M.Sankaranarayanan
2.M.Radhakrishnan
3.M.Surya Narayanan
(appellants 1 to 3 deceased)
4.S.Ramasamy
5.R.Sankar Babu
6.M.Jaya Prakash Narayanan
rep.by their Power of Attorney
Mr.M.Suryanarayanan
7.Sudha
8.Vikashni
9.Harshini
10.S.Muthukrishnan Appellants

Appellants 7 to 10 brought on record
as Lrs of the deceased 2nd appellant
vide order of this Court dated 24.01.2018
made in C.M.P.No.515 of 2018 in
A.S.No.749/2010

vs.

Geetha Santosh ... Respondent

Appeal suit filed under Order XLI rule I C.P.C. read with
Section 96 of C.P.C. against the judgment and decree dated
09.07.2010, made in I.A.No.70 of 2007 in O.S.No.712 of 2004,
passed by the I Additional District Judge, Coimbatore.

For Appellants :Mr.K.Harishankar

For Respondent :Mr.K.P.Gopalakrishnan

JUDGMENT

(Judgment of the Court was delivered by A.SELVAM,J.)

This Appeal Suit has been directed against the final decree passed in I.A.No.70 of 2007 in O.S.No.712 of 2004, by the I Additional District Court, Coimbatore.

2.The appellants herein, as plaintiffs, have instituted original suit No.712 of 2004, by on the file of the trial Court, praying to pass a preliminary decree of partition in respect of their 7/9 shares in both 'A' and 'B' schedule properties, wherein, the present respondent has been shown as sole defendant.

3.The trial Court, after considering the available evidence on record, has passed a preliminary decree and in pursuance of the same, for passing a final decree, the plaintiffs, as petitioners, have filed I.A.No.70 of 2007, on the file of the trial Court.

4.The trial Court has appointed an Advocate Commissioner and accordingly, the Advocate Commissioner has inspected both the suit 'A' and 'B' schedule properties and given some suggestions for the purpose of allotting shares of both the petitioners/plaintiffs and respondent/defendant.

5.On the basis of the suggestions given by the Advocate Commissioner and also juxtaposition of both 'A' and 'B' schedule properties, the trial Court has allotted 10 feet on the Eastern end of cross cut road and 70 feet in North-South direction, 8th Street to the respondent/defendant and the remaining portion has been allotted to the petitioners/plaintiffs by way of passing a final decree and the same is being challenged in the present appeal suit.

6.The learned counsel appearing for the appellants/petitioners/plaintiffs has sparingly contended to the effect that the Advocate Commissioner has given some options exercised by both parties, but the same has not at all been considered by the trial Court and erroneously allotted the Western 10 feet on the Eastern end of Cross-cut Road to the respondent/defendant and further, the equivalent portion allotted to the share of appellants/petitioners/plaintiffs is situate on the Eastern side and the same is in a ramshackle condition. Under the said circumstances, the portion allotted in the preliminary decree to the respondent/defendant may be allotted to the share of the appellants/petitioners/plaintiffs and the portion allotted to the appellants/petitioners/plaintiffs can be allotted to the share of respondent/defendant.

7.To controvert the contentions put forth on the side of the appellants/petitioners/plaintiffs, the learned counsel appearing for the respondent/defendant has contended to the effect that the respondent/defendant is a widow and in the portion allotted to her share, a business is going on and the same is the only source of living and the trial Court, after considering the options made in the Commissioner's report and also juxtaposition of the entire suit 'A' and 'B' schedule properties, has rightly passed a final decree and the same does not call for any interference.

8.It is true that in the Commissioner's report, the options expressed by both parties are mentioned. There is no difference with regard to extent of properties allotted to both parties.

9.The only grievance expressed on the side of the appellants/petitioners/plaintiffs is that the portion allotted to them is in a dilapidated condition.

10.It is an admitted fact that O.S.No.712 of 2004 has been instituted for passing a preliminary decree of partition in respect of 7/8 shares of the plaintiffs. It is also equally an admitted fact that the defendant is having 1/8 share. The preliminary decree has been passed only in accordance with quantum of shares of both parties.

11.As mentioned supra, in the Commissioner's report, the options expressed by both parties are mentioned. However, the trial Court has allotted the portion mentioned in the final decree to the respondent/defendant. Simply because the portion allotted to the share of the appellants/petitioners/plaintiffs is in a dilapidated condition, the same cannot be allotted to the share of respondent/defendant. Further, in the portion allotted to the respondent/defendant, a business is going on and the same is the only source of income of the respondent/defendant. Under the said circumstances, the contentions put forth on the side of the appellant/petitioners/plaintiffs cannot be accepted and therefore, the present Appeal Suit deserves to be dismissed.

In fine, this Appeal suit is dismissed with costs. Connected miscellaneous petition is dismissed.

Sd/-

Assistant Registrar(CO)

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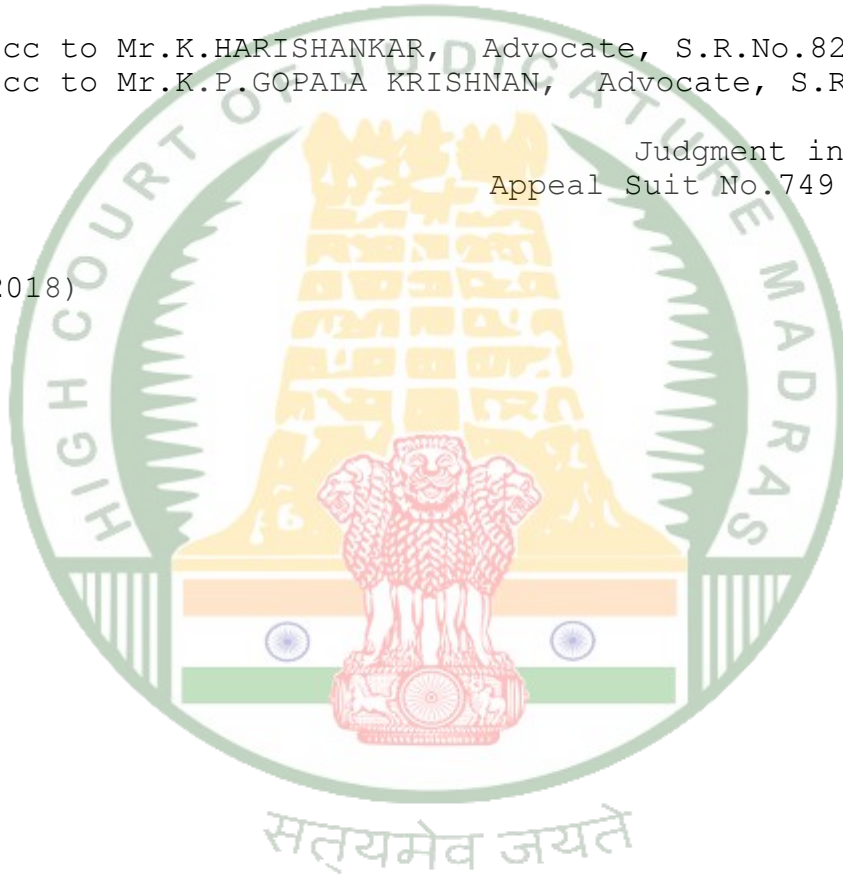
The I Additional District Judge,
Coimbatore.

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+2cc to Mr.K.HARISHANKAR, Advocate, S.R.No.8209
+1cc to Mr.K.P.GOPALA KRISHNAN, Advocate, S.R.No. 8106

Judgment in
Appeal Suit No.749 of 2010

ks (CO)
TR(12/03/2018)



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