

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N. KIRUBAKARAN
AND
THE HONOURABLE MR. JUSTICE S. BASKARAN

O.S.A. No. 238 of 2018

A. Vatchala

..Appellant

Vs.

1. Selva Booshanam
2. Yasodha
3. Kanniammal
4. P. Ponnusamy
5. P. Jeevaratnam
6. P. Sivanandam (deceased)
7. Mrs.S. Vasantha
8. Mr.S. Prabhu

(7th and 8th respondents brought on
record as legal heirs of deceased
6th respondent by order dated 1.11.2018
in C.M.P. No. 15691/2018)

..Respondents

Prayer: Original Side Appeal as against the judgment and decree
dated 20.10.2017 made in Application No. 3770 of 2016 in E.P.
No. 84 of 2014 in Application No. 3620 of 2002 in C.S. No. 760
of 1998.

For Appellant :: Mr.M. Balasubramanian

For Respondents :: Mr.R. Srinivas for
R1 to R3

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J U D G M E N T

The above appeal has been filed by the 4th defendant as
against the plaintiffs and defendants 1 to 3 challenging the
judgment and decree dated 20.10.2017 made in Application No.
3770 of 2016 in E.P. No. 84 of 2014 in Application No. 3620 of
2002 in C.S. No. 760 of 1998.

2. The original suit in C.S. No. 760 of 1998 has been filed by respondents 1 to 3 against the appellant and other respondents for partition. The suit was decreed and preliminary decree was passed and subsequently, application No. 3620/2002 was taken out for passing a final decree. The final decree was passed in terms of the Advocate Commissioner's Report and Engineer's Report on 21.02.2008 and the operative portion of the same reads as follows:

"(a) The suit schedule property shall be divided into 7 moieties, as shown in the sketch attached to the Engineer's report accompanying the Advocate Commissioner's report.

(b) The plots shown as Division Nos. 1, 3 and 4 in the Engineer's sketch shall be allotted to the plaintiffs 1, 2 and 3 respectively.

(c) The plot earmarked as Division No.2 in the Engineer's sketch shall be allotted to the 4th defendant.

(d) The plots earmarked as Division Nos.5, 6 and 7 in the Engineer's sketch shall be allotted to defendants 1, 2 and 3 respectively.

(e) A passage of the width 9 feet 8 inches running from east to west from Mandapam 3rd Lane, shall be kept in common only for the enjoyment of the plaintiffs 1 to 3 and the defendants shall have no right or interest over the said passage.

(f) The Engineer's sketch shall form part of the decree. The superstructure shall be demolished to facilitate their division. There shall be no order as to costs."

3. The said final decree has not been challenged by any of the parties and it has attained finality. Thereafter, a memo has been filed by the appellant/4th defendant before this Court seeking to grant permission to the appellant to use the rear side passage of width 9 feet 8 inches for the purpose of maintaining her wall alone. Thereafter, application Nos. 3770/2016 & 3771 of 2016 have been taken out by the appellant to modify the order and decretal order dated 21.02.2008 made in application No. 3620 of 2002 in C.S. NO. 760 of 1998 so as to make it in consonance with the judgment and decree dated 11.09.1997 made in O.P. No. 289 of 1996 and to stay the execution proceedings respectively. Application No. 3770 of 2017 was dismissed holding that the final decree had already attained finality as no appeal had been filed and Application No. 3771 of 2017 was closed. Against the said dismissal order, the present appeal has been filed by the 4th defendant.

4. Heard Mr.M. Balasubramanian, learned counsel for the appellant and Mr.R. Srinivas, learned counsel for respondents 1 to 3.

5. When the matter is called today, a joint memo of compromise dated 01.11.2018 filed by the appellant/4th defendant and respondents 1 to 3/plaintiffs signed by the above parties and counter signed by the respective counsel has been filed. All the parties to the memo of compromise are present before this Court and they would submit that understanding the terms of the memo of compromise, they have affixed their signatures and they have also reiterated what has been stated in the said memo of compromise. The 4th respondent herein and 7th and 8th respondents, namely Mrs.S. Vasantha and Mr.S. Prabhu, who are the legal heirs of deceased 6th respondent, are also present before this Court.

6. As per the terms of the memo of compromise and as per the statement made by the parties before this Court, the appellant/4th defendant is permitted to use the 9 feet 8 inches common passage running from east to west from Mandapam 3rd lane kept in common use only for the enjoyment of respondents 1 to 3/plaintiffs, only for repairing the northern side wall i.e., on the passage side and for white washing when necessity arises with prior notice to the plaintiffs. It is made clear that issuance of notice itself is enough and no permission needs to be obtained. The appellant/4th defendant shall not store any materials in the common passage at the time of whitewashing/repairing the northern side wall periodically and shall not park any vehicle. In all other aspects, the parties are directed to abide by the final decree.

7. The Joint Memo of Compromise dated 01.11.2018 is hereby recorded and Original Side Appeal is disposed of in terms of the joint memo of compromise. The Joint Memo of Compromise shall form part of the decree.

8. Since E.P. No. 84/2014 is pending before the learned Master, learned Master is to expedite the proceedings in E.P. No costs. OSA is disposed of accordingly.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

nv

To

1. The Sub Assistant Registrar, High Court, Madras.

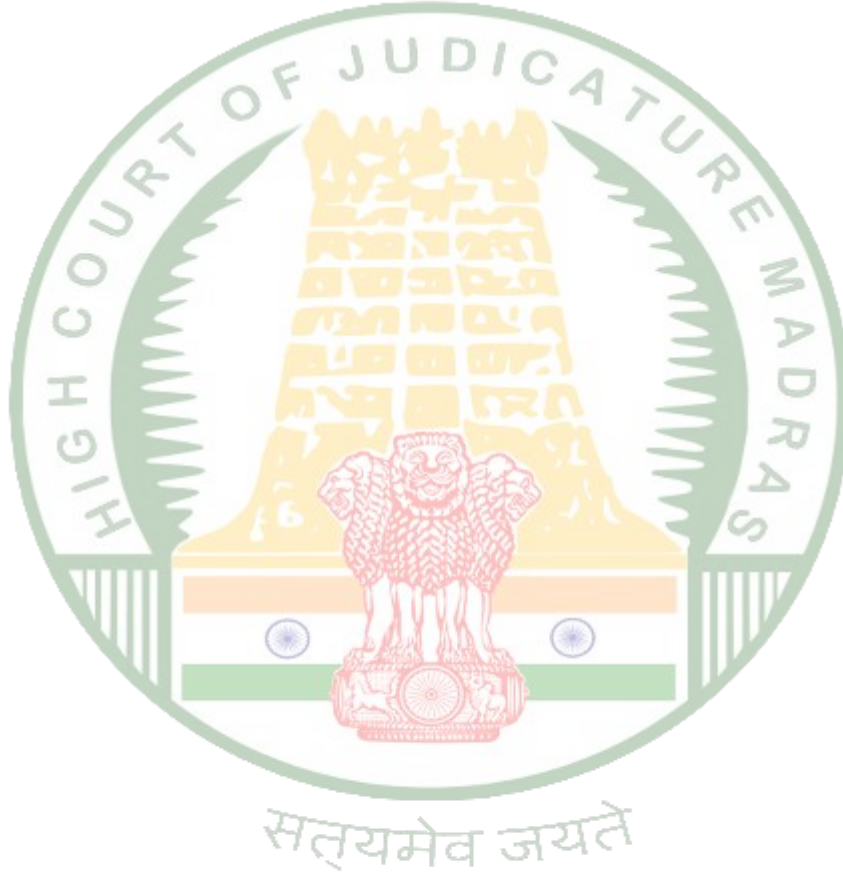
2. The Master, High Court, Madras.

+1cc to Mr.M.Balasubramanian, Advocate SR.No.75177

O.S.A. No. 238 of 2018

RJI (CO)

GMV (31/01/2019)



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