

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 30.11.2018

Coram

THE HONOURABLE Ms. JUSTICE P.T. ASHA

A.S.No.295 of 2017

and

C.M.P.No.11099 of 2017

K.G.Mohanambal

...Appellant/2nd Defendant

Versus

1.Tmt.Backiyam

2.M.Rajagopalan ...Respondents/Plaintiff/1st Defendant

Prayer: This Appeal suit is filed under Order 41 Rule 1 and 2 read with Section 96 of the Civil Procedure Code, against the Judgment and Decree dated 07.02.2011 made in I.A.No. 60 of 2010 in O.S.No.28 of 2009 on the file of Principal District Judge Perambalur.

For Appellant : Mr.P.Dinesh Kumar

For Respondents : Mr.P.Valliappan for R1
: No appearance for R2

J U D G M E N T

The above First Appeal is filed challenging the final decree in I.A.No.60 of 2010 in O.S.No.28 of 2009 on the file of the Principal District Court, Perambalur.

2. The learned counsel for the appellant has raised several grounds challenging the final decree. Ultimately the issue is restricted to a very small spectrum. The grievances of the appellant is that the second respondent who was the first defendant in the suit, as well as in the final decree proceedings is a lawyer and he had entered appearance for the appellant/second defendant both in the suit as well as in the final decree proceedings. The appellant had reposed utmost trust on the second respondent and she was under the bonafide belief that her interest would be taken care off. It is the case that she was not even informed about the passing of the final decree and she received notice in the execution proceedings and she had become aware of the actual division that had been effected in the final decree proceedings.

3. She would contend that the first defendant/second respondent herein has taken the lion's share since he has taken the property which has the access to the 20 ft. road whereas she has been provided property with just a 15 ft. access. No doubt, the access has been provided on both sides but however, it is only a 15 ft. access. The learned counsel would therefore contend that the division is not a just

division as the value of the land having a 20 ft. road is definitely more than the value of the land having a 15 ft. access.

4. The second respondent despite notice has not entered appearance in the above first appeal.

5. Heard both parties.

6. From a perusal of the Commissioner's plan, submitted by the Advocate Commissioner (to which this Court has now made alphabetical markings) it is seen that the portion marked as A,B,C,D has been allotted to the share of the plaintiff/first respondent herein. The portion marked C,D,E,F,G,H,I,J has been allotted to the share of the second respondent/first defendant herein. The portion marked as I,J,K,L,M,N,O,P has been allotted to the share of the appellant/second defendant herein. It is therefore evident that the plaintiff and the first defendant have access from the 20 ft. road whereas the same is not available to the appellant/second defendant herein. The property which is marked I,J,K,L measures an extent of 3,213 sq.ft and the portion marked C,D,E,F measures an extent of 2,686.2 sq.ft. In order to ensure that the division is equitable, it would be just and proper to interchange and to allot the property marked I,J,K,L measuring an extent of 3,213 sq.ft. to the first defendant/second respondent herein and the property shown as C,D,E,F measuring an extent of 2,686.2 sq.ft. be allotted to the share of the appellant/second defendant herein. By reason of this interchange, the plaintiff will continue to hold the property described as A,B,C,D. The first defendant/second respondent herein is now entitled to the property shown as marked as G,H,I,J,K,L. The appellant/second defendant will now be allotted the property described as C,D,E,F and M,N,O,P. The final decree is therefore modified on the above lines.

7. By reason of this exchange the total area which falls to the share of the first defendant/second respondent

herein increases and that of the second defendant/appellant is reduced. However, the appellant is ready to forgo this extent from the lands allotted to her in order to have a access from the 20 ft. road to the property. The allotment is modified in order to ensure an equitable distribution.

8. In the result, the first appeal is partly allowed with the modification as stated above and detailed in the Commissioner's plan appended herewith. In all other aspects, the decree shall stand unaltered. The Advocate Commissioner's plan with the alphabetical markings now inserted by this Court shall form part of the decree.

9. Accordingly, the First Appeal is partly allowed. Consequently the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

gbi/vji

To

1.The Principal District Judge,
Perambalur.

2. The section officer,
VR Section,
High court,Madras

+1cc to Mr.P.Valliappan , Advocate SR.No. 82400

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A.SK(29/04/2019)

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