

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

APPEAL SUIT No.1364 of 1999

ORDER:

This first appeal suit, under Section 96 of the Code of Civil Procedure, 1908, by the unsuccessful 2nd defendant, is directed against the order, dated 07.04.1999, of the learned I Additional Senior Civil Judge, Visakhapatnam, passed in I.A.No.261 of 1996 in O.S.No.78 of 1994.

2. I have heard the submissions of Sri *K.V.N.Bhupal*, learned counsel appearing for the 2nd defendant/appellant, and of Sri *M.Ram Mohan*, learned counsel appearing for the 1st respondent/plaintiff. The 2nd respondent is the 1st defendant in the suit. I have perused the material record.

3. The facts, which are necessary to be stated as a prelude to this judgment, in brief, are as follows:

'After the 1st respondent/plaintiff obtained a preliminary decree in the afore-stated suit, he initiated proceedings before the trial Court for passing of a final decree by filing an application and *inter alia* seeking appointment of a Commissioner for partition of the plaint schedule property as per the terms of the preliminary decree. Considering the request of the plaintiff, the trial Court appointed a commissioner for partition of the preliminary decree schedule properties into four equal shares and to draw a plan showing the four shares. The commissioner filed a report with plan before the trial Court. At that stage, the trial Court, having heard the counsel for the parties, framed the following point for consideration:

"Whether the petitioner/plaintiff is entitled for partition in terms of the preliminary decree and for allotment of one such share?"

On merits and by the order impugned in this appeal, the trial Court while allotting the shares to the sharers as per the terms of the preliminary decree and as per the commissioner's plan, passed the final decree accordingly and directed the plaintiff to file necessary stamps for engrossing the final decree. Aggrieved thereof, the 2nd defendant is before this Court.'

4. Learned counsel for the 2nd defendant/appellant herein would submit that the plaintiff insisted for allotment of 'B' marked portion i.e., one room in 'B' marked portion along with 'A' marked portion and that the trial Court erroneously gave an additional room in 'B' marked portion to the plaintiff without any basis and that allotment of one such room in 'B' marked portion is causing inconvenience and hardship to the 2nd defendant/appellant herein and, therefore, the appellant is before this Court.

5. Learned counsel for the 1st respondent/plaintiff would submit as follows: - 'Both parties filed objections to the commissioner's report. The matter was once heard by the learned predecessor officer of the officer, who passed the impugned order. From the material record, it is discernible that a suggestion has fallen from the Bench, that is, the said officer for amicable settlement between the parties and that accepting such suggestion, the plaintiff agreed for allotment of the share as suggested. However, the predecessor Judge of the learned Judge, who passed the impugned order, could not pass the final decree. His successor, i.e., the learned Judge, who passed the present order, therefore, passed the orders as per the suggestion that has earlier fallen from the Bench and which was accepted. The

allotment of the shares made as per the preliminary decree and the commissioner's plan would indicate that there is equitable allotment of shares. Be that as it may, even before the final decree is engrossed on stamps, the 2nd defendant rushed to this Court. In the facts and circumstances of the case, the Appeal Suit is devoid of merit and is liable to be dismissed.'

6. I have given earnest consideration to the facts and submissions.

7. As rightly pointed out, the order impugned reads that during the time of the predecessor of the learned Judge, who passed the impugned order, a suggestion has fallen from the Bench and that on that the plaintiff agreed to take 'A' marked portion shown in the commissioner's plan along with a room situated in the North-West corner, only to make the values of 'A' and 'B' marked portions equal. The order impugned also reflects that accepting the said suggestion that has fallen from the Bench earlier, the learned counsel for the plaintiff filed a memo agreeing for the same. Admittedly, 'C' & 'D' marked portions of the commissioner's plan are allotted to the defendants 1 & 2. From the record, it is discernable that when the plaintiff insisted for allotment of 'B' marked portion, the learned predecessor officer of the officer who passed the impugned order made a suggestion from the bench for amicable settlement and the same was accepted. Having regard to the peculiar circumstances of the case, the learned Judge of the trial Court recorded his approval in the impugned order and held that if the 'A' marked portion is allotted to the plaintiff along with one room situated in the North-

West Corner of 'B' marked portion and rest of the portions 'B, C and D' of the Commissioner's plan are allotted to the defendants, the said course meets the ends of justice. Accordingly, the above point that was settled for determination was answered by the learned Judge of the trial Court and the room in the North-West corner of 'B' block along with 'A' block is allotted to the plaintiff and while allotting the remaining blocks to the defendants, a final decree was accordingly passed and was directed to be engrossed on stamps.

On the above analysis, this Court finds that for making the partition just & equitable and the values of the shares allotted equal, the procedure of allotment, as indicated in the orders impugned, was adopted by the trial Court. Since the allotment of shares, as was done by the trial court by the impugned order, appears to be just, equitable and fair, in the facts and circumstances of the case, this Court finds **no merit** in the contentions of the appellant/2nd defendant. Accordingly, this Court holds that this appeal is devoid of merit and is liable to be dismissed.

8. In the result, the Appeal Suit is dismissed.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

There shall be no order as to costs.

M.SEETHARAMA MURTI, J

Date: 24th January, 2018

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