

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 19.08.2019

PRONOUNCED ON : 29.08.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

S.A.No.189 of 2018

1.Irudhayamery
2.Ratchagar
3.Lourdhusamy
4.Sammansumery
5.Elizebeth Rani
6.Kuzhandai Therasa
7.Nirmala
8.Polin
9.Arokiamery
10.Anandh
11.Rajit

... Appellants/Defendants

Vs.

1.Francis
2.Periyanayagam

... Respondents/Plaintiffs

Prayer :- Second Appeal has been filed under Section 100 of CPC against the Judgement and Decree dated 11.04.2017 passed in A.S.No.12 of 2015 on the file of the Subordinate Court, Panruti, confirming the fair and decreetal order dated 25.03.2015 passed in I.A.No.387 of 2004 in O.S.No.126 of 2000 on the file of the District Munsif Court, Panruti.

For Appellants : Ms.P.Srividya
for M/s.T.Surendran

For Respondents : Mr.R.Gururaj

JUDGMENT

Challenge in this second appeal is made to the Judgement and Decree dated 11.04.2017 passed in A.S.No.12 of 2015 on the file of the Subordinate Court, Panruti, confirming the fair and decreetal order dated 25.03.2015 passed in I.A.No.387 of 2004 in O.S.No.126 of 2000 on the file of the District Munsif Court, Panruti.

2. For the sake of convenience, the parties are referred to as per their rankings in the trial Court.

3. As could be seen from the materials placed on record, it is found that the suit has been laid by the plaintiff for partition and accordingly, it is found that the preliminary decree has been passed in favour of the plaintiff declaring his share in the items 1 to 3 of the suit properties and also for future accounting. Pursuant to the preliminary decree passed in the suit, it is found that the plaintiff has preferred the application for passing the final decree in terms of the preliminary decree. The defendants preferred the objection to the abovesaid application contending that they had taken steps to challenge the preliminary decree passed in the suit and accordingly, put forth the case that final decree application laid by the plaintiff is not maintainable.

4. However, considering the available materials placed on record, when it is found that there is no proof placed on the part of the defendants to hold that they had challenged the preliminary decree passed in the suit in the manner known to law, accordingly, the abovesaid contention raised by the defendants, being without any basis, it is found that the trial Court had appointed the advocate commissioner for suggesting the mode of division of the suit properties in terms of the preliminary decree and it is found that the first commissioner, who had been appointed in the matter did not file his report properly and accordingly, it is found that the second advocate commissioner had been appointed in the matter and the said commissioner had filed his report suggesting the mode of division of the suit properties as per the preliminary decree.

5. The courts below had considered the report of the advocate commissioner in toto and found that he had suggested the mode of division of the suit properties in terms of the preliminary decree and it is seen that the advocate commissioner in his report had wrongly given the designation of the parties as petitioner/defendant in stead of the petitioner/plaintiff and the same had been considered by the Courts below and accordingly, it is further noted that the parties, before the courts below, had also agreed that the mode of division suggested by the advocate commissioner could be adopted by correcting the parties status as given in the report and accordingly, the final decree be passed in the matter and based on the abovesaid submission, it is found that the Courts below had also accepted the commissioner's report and passed the final decree allotting the share to which the parties are entitled to as per the preliminary decree.

6. In the light of the above position, when it is seen that the advocate commissioner has suggested the mode of division of the suit properties only in terms of the preliminary decree and rightly allotted the shares to which the parties are entitled to, taking into account the convenience of the parties as well as their enjoyment of the properties concerned and in such view of the matter, the Courts below had rightly adopted the mode of division as suggested by the advocate commissioner and following the same, passed the final decree in the matter, allotting the shares to which the parties are entitled to.

7. In the light of the abovesaid position, when the allotment of shares in the suit properties had been made taking into account the convenience of both the parties and also by properly considering the wrong reference about the status of the parties by the advocate commissioner in the report and also noting that by way of the same, no prejudice would be caused in any manner and in such view of the matter, when the Courts below had allotted the shares to the parties in tune with the preliminary decree and the abovesaid determination of the courts below being based on the factual matrix and not suffering from any infirmity or irrationality in any manner and in such view of the matter, I do not find any acceptance in the second appeal.

For the reasons aforesaid, no substantial question of law is found to be involved in the matter and resultantly, the second appeal is dismissed. Consequently, connected miscellaneous petition, if any, is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge,
Panruti.

2. The District Munsif,
Panruti.

+1cc to Mr. Surendran, Advocate Sr.74253
+1cc to Mr. R. Gururaj, Advocate Sr.75188

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srg 11/02/2020