

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date : 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Second Appeal No.316 of 2012

Mr.R.Pasupathy

... Appellant

Vs

1. Mrs.Senbagavalli
2. Mr.Baskaran
3. Ms.Durga
4. Mrs.Vijayalakshmi
Gunasundari (Died)
5. Mrs.Parameswari
6. Mr.D.Sivakumar
7. Mr.D.Babu
8. Ms.D.Manimegalai
9. Ms.D.Sumathi

... Respondents

Prayer:- Second Appeal has been filed under Section 100 of C.P.C., against the judgment and decree dated 21.04.2011 in A.S.No.221 of 2008 on the file of the IV Additional Judge, City Civil Court, Chennai reversing the judgment and decree passed in the Final Decree in I.A.No.22236 of 1997 in O.S.No.5270 of 1983 dated 29.01.2007 on the file of the I Assistant Judge, City Civil Court, Chennai.

For Appellant : Mr.T.R.Rajaraman
for Senathipathi

For Respondents: Mr.A.Chenchurama Reddy - R1 to R3
Mr.G.Mohanakrishnan - R4 to 9

JUDGMENT

This Second Appeal has been filed as against the Order of remand passed by the first appellate Court.

2. It is not in dispute that the suit filed for partition of the property on the ground that the properties are ancestral properties. The plaintiff has claimed partition of 2/5th share in the suit property. The first defendant is the brother and

the other defendants are his sisters. However, a preliminary decree has been passed by dividing the suit property and allotting 2/5th share to the plaintiff. In the preliminary decree, the share of the defendants have not been determined. The first defendant has also not challenged the preliminary decree.

3. The learned trial Court took note of the consent memo filed by the first defendant has allotted 400 sq.ft. to him in the final decree. The plaintiff was allotted 960 sq.ft. When the final decree was put in challenge in the appeal, the appellate Court has remanded the matter once again to the trial Court to allot shares as 2/6 to the plaintiff. Challenging the remand Order passed by the first appellate Court, the present appeal came to be filed.

4. At the time of arguments, when this Court posed question to the respective counsels as to any settlement, the learned counsel for the appellant has filed a detailed plan allotting properties to the respective parties. The plaintiff and the first defendant, who are co-parsenors at the relevant point of time, are entitled to larger share, namely 2/5 and 2/5 and the other defendants together are entitled to 1/6 share.

5. Admittedly, the property is to an extent of 2400 sq.ft. only. In order to give a quietus to the litigation among the family members, the appellant counsel has filed a memo with a detailed plan. The learned counsel appearing for the respondents 1, 2 and 3 fairly accepted the proposal and the first respondent and her daughter-in-law are present. They also have no objection for the allotment as per the plan. Similarly, the appellant is also present along with his counsel. He has also no objection for allotment of share as per the plan. The legal heirs of one of the deceased respondent Gunasundari is also present. They also have no objection for such allotment. The learned counsel appearing for the respondents 4 and 6 is also present and she has also no objection for the same.

6. Both the parties and their respective counsels present and they also filed a memo accepting the proposal filed by the plaintiff. This Court perused the memo and the plan. Admittedly, the property is to an extent of 2400 sq.ft. The plan appended along with the memo gives a clear picture of allotment of shares to the parties. Ofcourse, certain shares of the brothers have been reduced. For convenience of enjoyment of the property by the parties, the parties have agreed to take the shares as such.

7. Therefore, this Court is of the view that in order to give quietus to dispose of this Second Appeal, final decree is

passed directly on the basis of the plan filed before this Court. The plan shall be part and parcel of the final decree. The parties are directed to file necessary Non Judicial Stamp papers for engrossing the final decree within two weeks.

8. With regard to the mesne profits, the parties are relegated to separate proceedings. It is also agreed that in the event of the female members deciding to sell their respective shares allotted to them, preferential right shall be given to both the brothers for purchase of the properties.

9. Accordingly, the judgment and decree of the Courts below are set aside and this Second Appeal is allowed in the above terms. No cost.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vrc
To

1. The IV Additional Judge,
City Civil Court, Chennai.
2. The I Assistant Judge,
City Civil Court, Chennai.

Copy To:
The Section Officer,
V.R.Section, High Court, Madras.

+5 cc to Mr.V.V.Sairam, Advocate SR.No.8875
+1 cc to Mr.A.Chenchurama Reddy, Advocate SR.No.9187

CSL/20.03.2019

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