

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 26.02.2019
C O R A M
THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR
Second Appeal No.35 of 2012
and M.P.No.1 and 2 of 2012

Arumugam

...Appellant/Appellant/Ist
defendant

Vs.

1. Kuppammal ...Ist Respondent/1st
respondent/Petitioner
2. Kannan (deceased) ...IInd Respondent/2nd
Respondent/2nd respondent
3. Venkatesan
4. Ezhumalai
5. Valarmathi
6. Selvi
7. SumathiRespondents 3 to 7

(respondents 3 to 7 brought on record as LR's of the
deceased 2nd respondent vide order of this court
dated 8.1.2019 made in CMP No.22187 of 2008
in S.A.No.35 of 2012)

PRAYER: Second Appeal filed under Section 100 of the
Code of Civil Procedure against the decree and judgment dated
23.09.2011 passed in A.S.No.28 of 2008 by the Principal District
Judge, Villupuram confirming the decree and judgment dated
31.07.2002 passed in I.A.No.225 of 2002 in O.S.No.287 of 1999
by the I Additional District Munsif, Tirukoilur.

For Appellant : Mr. N.Suresh
For Respondent No.3 to 7 : Mr.T.S.Baskaran
For 1st respondent : No appearance.
Second Respondent : Died

JUDGMENT

Challenging the decree and judgment passed by the
first appellate court in A.S.No.28 of 2008, confirming the
allotment of properties in favour of plaintiff, made by the

trial court in I.A.No.225 of 2002 in O.S.No.287 of 1999 in the final decree proceedings, this second appeal has been filed.

2. The appellant is the first defendant in the original suit No.287 of 1999, while the first respondent is plaintiff, who filed a suit for partition. During the pendency of this second appeal, the 2nd respondent/2nd defendant died and his legal heirs were brought on record as respondents 3 to 7. In the suit, preliminary decree was passed on 31.12.2001. Subsequently, the plaintiff has filed an application in I.A.No.225 of 2002 in O.S.No.287 of 1999 for passing final decree to allot her share in the properties in accordance with the preliminary decree. While passing final decree in favour of the plaintiff, the trial court has held that Ex.C3 (commissioner report) and Ex.C4 (plan) shall be treated as part and parcel of the final decree. Against which, the present appeal has been filed.

3. The only grievance of the appellant is that, the plan Ex.C4 relied upon by the trial court is not correct one. However, the plan Ex.C2 after excluding the portion 5B2 and 9, would be the correct plan. According to the appellant, only in the plan Ex.C2, path way has been given from the street to both parties and in the survey No.4D, 5E and 6F, entrance and access were given on both side and hence, Ex.C2 would be the correct plan to be approved. The learned counsel appearing for the respondents 3 to 7 has not disputed the above fact.

4. The only dispute is with regard to the allotment of the pathway. Hence, this court called for the records from the trial court and verified the final decree. Though the allotment was not questioned by the appellant/ 1st defendant, his grievance is only with regard to the plan Ex.C4, attached to the final decree.

5. In earlier occasion, the commissioner has filed a plan Ex.C2 before the trial court, wherein he has allotted path way to both parties in survey No.4D, 5E and 6F. However, in the above plan Ex.C2, the commissioner has committed a mistake by allotting some extent in survey No.132/5B2. To set right the above mistake, the court below has directed the commissioner to file another plan. Accordingly, the commissioner has also filed another plan which was marked as Ex.C4. While filing plan Ex.C4, the commissioner has omitted to draw a pathway, as per the drawing in the original plan Ex.C2 and that was leading to file the second appeal.

6. Since the issue is very simple and narrow and there was no dispute with regard to the allotment of share and the only dispute is with regard to the allotment of pathway, that

too because of mistake found in the plan, this court after comparing both the plan Ex.C2 and Ex.D4 and after hearing both sides, then fairly conceded that the plan Ex.C2 will be the correct plan after making certain modification as scored the portion 5B2 and 9 in red colour and also noted in that area as "cancelled" and this court has also endorsed the date also in that portion. In the above plan Ex.C2, the portion 5B2 and 9, which was cancelled by this court, is not allotted to anybody.

7. After making such modification with the consent of both sides, this court hold that the order passed by the trial court that the Ex.C3 and Ex.C4 shall be treated as part and parcel of the final decree is hereby modified to the effect that "the Ex.C3 commissioner report and Ex.C2 plan shall be part and parcel of the final decree."

8. Accordingly,

(i) The final decree passed by the trial court is modified to the effect that the commissioner report Ex.C3 and the plan Ex.C2 shall be part and parcel of the final decree and the pathway specifically mentioned in the plan Ex.C2 is allotted to the both parties.

(ii) In the plan Ex.C2, the portion 5B2 and 9, which was cancelled by this court, is not allotted to anybody.

(iii) It is also brought to the notice of this court that the appellant has not paid any court fee for specific allotment, though division is made in the plan. However, it is for him to workout the same and to pay necessary court fee before the trial court.

9. With the above observations, this second appeal is disposed of. No costs. Consequently, connected civil miscellaneous petitions are closed.

-s/d-

Assistant Registrar

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To

1. The Principal District Judge, Villupuram

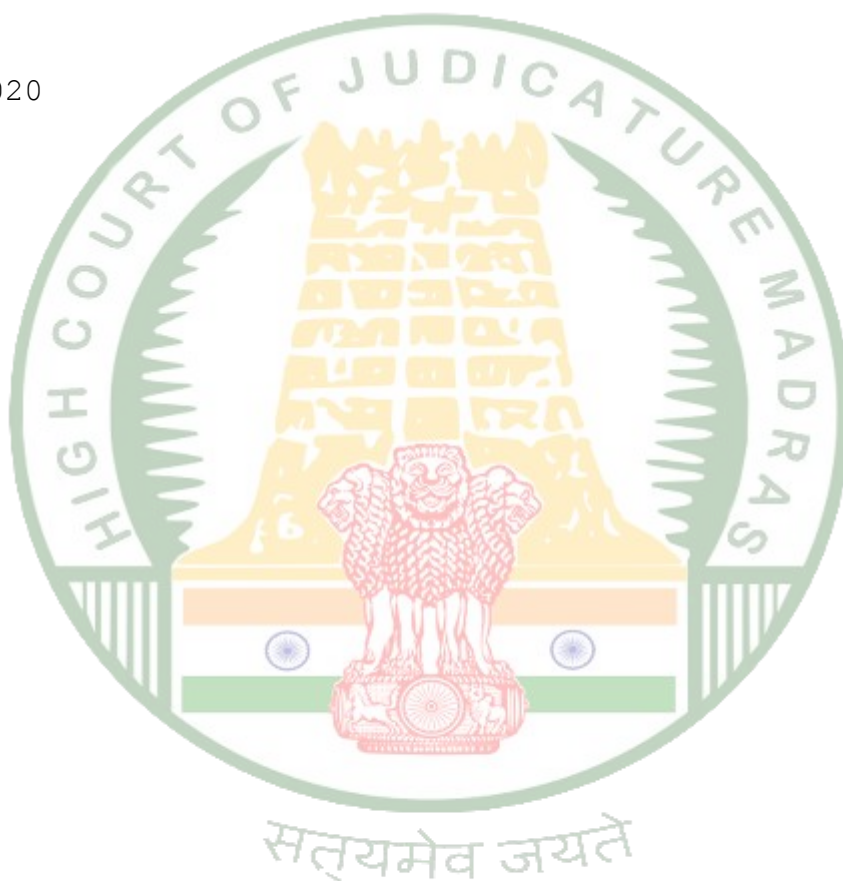
2. The I Additional District Munsif, Thirukoilur

3.The Section Officer
VR Section
High Court, Madras

+1 cc to Mr.T.S.Baskaran Advocate sr17853
+1 cc to Mr.N.Suresh Advocate sr18107

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