

A.Nos.4921 of 2017 and 2073 of 2018
in C.S.No.849 of 2013

PUSHPA SATHYANARAYANA, J.

A preliminary decree in the above suit for partition was passed on 21.02.2017.

2. The property originally belongs to Mrs.Saraswathy Ammal, who had four daughters and two sons. The plaintiff in the suit is the husband of one of the daughters of the said Saraswathy Ammal, who died in the year 1993. The property devolved upon all the legal heirs entitling each of them by 1/6th share, as the husband of Saraswathy Ammal pre-deceased her. The plaintiff's wife's sisters one Sulochana and her brothers Mr.V.S.Murali and Ms.S.Narayana Reddy released their respective shares in the suit property in favour of the plaintiff's wife Varalakshmi. Thus, Varalakshmi became entitled to 4/6th share including her share in the suit property. The said Varalakshmi had executed a settlement deed in favour of the plaintiff on 12.06.2013 settling 4/6th share in the suit property. Thus, the plaintiff was absolute owner of the said property and had filed the suit for partition.

3. The other two sisters, namely, Mrs.P.Rajeswari and Mrs.P.Indirani were shown as defendants. As there was only one

property and the shares were devolved upon the parties equally, the preliminary decree was passed declaring $\frac{4}{6}$ th share in favour of the plaintiff and $\frac{1}{6}$ th share each to the first and second defendants.

4. Based on the preliminary decree, A.No.4921 of 2017 was filed seeking to pass a final decree and A.No.4922 of 2017 was filed seeking to appoint an Advocate Commissioner to enable passing of the final decree. In A.No.4922 of 2017, an Advocate Commissioner was appointed to inspect the property and suggest the modality of dividing the property for allotting the shares to the co-owners.

5. A report was also filed by the Commissioner on 23.01.2018, wherein, it is stated that at the time of his visit, there was a building in the property and the building was in a dilapidated condition. Hence, the Commissioner could not divide the property equally between the parties and had suggested in his report that the equal division of the property could be done only after demolishing the building or in the alternative, the suit property could be sold as it is, the sale proceeds could be divided into six equal parts and appropriate shares could be allotted to the parties.

6. As the Commissioner could not divide the property into metes and bounds, the instant application in A.No.2703 of 2018 is taken out by the plaintiff for sale of the property in public auction by appointing a Commissioner.

7. This application is resisted by the second respondent/second defendant. The second respondent/second defendant has stated that she is agreeable for the suggestion made by the Commissioner that the schedule mentioned property can be divided and respective shares may be allotted to her. She has specifically stated that she is not willing to sell her 1/6th share of the schedule mentioned property as she is sentimentally attached to the property, wherein, her forefathers had lived. She is insisting her 1/6th share being allotted to her equally.

8. The first respondent is also entitled for 1/6th share, though she remained ex-parte, and it is open to her to pay the Court fees and get her share declared.

9. Originally, the plaintiff had filed a plan suggesting the mode of division, which bears Diary No.18179, after serving the learned counsel for the second respondent on 05.12.2018. As per the said

plan, a common passage of 3 feet wide was left on both East and West side of the property each for the respective share of the defendants. This was not agreeable to the second defendant.

10. Thereafter, the plaintiff had filed two plans dividing the suit schedule property, which is measuring an extent of 5520 sq.ft. In these plans, the property has been divided to indicate 1/6th share to each of the original sharers and the portion for which the plaintiff is entitled to after release in favour of his wife by the other sharers, which in turn, settled by his wife in favour of the plaintiff. The only difference between the two plans is that in plan A bearing diary No.18180, 7 feet passage was shown on the Eastern side of the property, whereas, in plan B bearing Diary No.18181, the common passage of 7 feet wide was shown on the Western side of the property. In plan B, Item No.1 measuring an extent of about 2839 sq.ft. on the front portion abutting the Perambur High Road is earmarked for the plaintiff, while item No.2 and 3 measuring 920 sq.ft. each are earmarked for the defendants share. The common passage of 7 feet wide in the 120 feet length about 840 sq.ft. is given as access on the Western side of the property to reach the defendants' shares.

11. As stated above, the first defendant remained exparte. Learned counsel for the second defendant/second respondent though insisted that the passage should be 10" wide, it was not agreed by the learned counsel for the plaintiff. It is the contention of the learned counsel for the plaintiff that of the 4/6th share, which is equivalent to 3680 sq.ft., he has given up 840 sq.ft. for the common passage to provide access to the defendants share. Therefore, it would be unfair for the defendants to ask for 10" wide common passage, which would once again take away another 360 sq.ft. from the share of the plaintiff.

12. The said argument of the plaintiff is acceptable, as it is fairly conceded that an extent of 840 sq.ft. is put use as a common passage without any deficit in the share of the defendants. Therefore, this Court is of the view that the plan marked B bearing Diary No.18181 is acceptable to the plaintiff as well as the second respondent before this Court and the final decree has to be passed in terms of the proposed plan B.

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13. Accordingly, Item No.1 measuring an extent of about 2839 sq.ft. abutting the Perambur High Road on the front portion, as mentioned in plan B, is allotted to the plaintiff and Item No.3

measuring an extent of about 920 sq.ft. on the rear side is allotted to the second defendant, leaving 7 feet common passage measuring 840 sq.ft. on the Western side of the property.

14. The final decree is passed as indicated above. It is open to the parties to divide the suit property as per the plan B annexed herewith and get respective possession.

15. Consequently, A.No.2703 of 2018 is closed.

26.06.2019

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