

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Civil Appellate Jurisdiction)

Wednesday, the Twenty Seventh day of November Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE R. SUBRAMANIAN

CMP No.24476 of 2019

in SA.235/2017

1 UDAYAPRIYA

[PETITIONERS]

2 VAISHNAVI DEVI

Vs

1 G. SENTHIL KUMAR

[RESPONDENTS]

2 G. VISALATCHI,

3 P. RAJAVELU,

4 S. GOVINDARAJ,

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to vacate the order dated 24.03.2017 in CMP.No.5563 of 2017 in SA.No.235 of 2017. (CMP.24476/2019)

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of M/S.R.SUBRAMANIAN, Advocate for the petitioner the court made the following order:-

This petition has been filed seeking to vacate the stay granted in the final decree proceedings. The suit was filed seeking partition and separate possession of the plaintiff's 5/12th share in the properties. The first defendant had sold the entirety of the properties to the defendants 2 and 3 including the share of the plaintiffs. The mother of the first defendant namely, the 4th defendant has executed a settlement deed in respect of her 1/12th share in favour of the first defendant. However, it is stated that the execution of the settlement deed has not been disclosed by the first defendant as well as the 4th defendant.

2. The Trial Court passed a preliminary decree granting 5/12th share to the plaintiffs. It is also found that the defendants 2 and 3, the purchasers from the first defendant would be entitled to 6/12th share and the first defendant would be entitled to the remaining 1/12th as per the settlement deed executed by the 4th defendant. None of the parties challenged the preliminary decree. A final decree application was filed in I.A.No.187 of 2007. Pending that application, it appears that, the defendants 2 and 3, the purchasers from the first defendant filed an application in I.A.No.359 of 2008 claiming that they would be entitled to 1/12th share also because the first defendant had sold the entire property to them, in view of Section 43 of the Transfer of Property Act. The said application was dismissed by the Trial Court.

3. A revision was taken to this Court in C.R.P.No.719 of 2012. The Civil Revision Petition was also dismissed by this Court observing that since the defendants 2 and 3 have not raised the said claim in the preliminary decree proceedings cannot request the Court during the final decree proceedings to go into the question of title regarding the 1/12th share allotted to the first defendant. Thereafter, a final decree came to be passed. The Commissioner appointed by the Trial Court had filed three plans suggesting three modes of divisions. The Trial Court had accepted Plan-B and allotted the properties as specified in Plan - B by the Advocate Commissioner. Aggrieved by the same, the defendants 2 and 3 filed an appeal in A.S.No.28 of 2012. It appears that a joint memorandum of compromise was filed by the appellants in A.S.No.28 of 2012 along with the respondents 1 and 2 namely, the plaintiffs in A.S.No.28 of 2012 swapping the properties thereby ensuring that the first defendant was allotted a property which measures 3 meters East West and 23.4 meters North South. This compromise was challenged by the appellants herein, who figured as respondents 1 and 4 in the final decree proceedings in S.A.No.817 of 2004. This Court rightly set aside the said compromise and remitted the matter to the lower Appellate Court for fresh consideration. The lower Appellate Court however, upon a re-consideration of the proposals of allotment made by the Commissioner accepted the Plan - A and allotted the same 3 meters by 23.4 meters to the appellant herein, who figures as first defendant in the suit. Challenging the said allotment, the appellant has come up with this second appeal.

5. It is an admitted case that the appellant is entitled to 1/12th share i.e., about 70 square meters. While passing a final decree, the Court is required to allot properties which are enjoyable by the properties. The Court is not meant to split the property in such a way that a minor share holder gets a property which cannot be put to any use. The allotment made by the first appellate Court, in my considered opinion is unjust and unreasonable. To allot a property measuring 3 meters in width and

23.4 meters in length is as good as not allotting any property to the sharer. Hence, the interim stay granted is made absolute. C.M.P.No. 24476 of 2019 is dismissed.

-sd/-
27/11/2019
/ TRUE COPY /

Sub-Assistant Registrar (Statistics / C.S.)
High Court, Madras - 600 104.

TO

1 THE SUBORDINATE JUDGE,
SANKAGIRI

2 THE 2ND ADDITIONAL DISTRICT
JUDGE, SALEM.

C.C. to M/S.R.SUBRAMANIAN Advocate on payment of necessary charges

Order
in
CMP.24476/2019
in SA.235/2017

Date :27/11/2019

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