

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2020

CORAM

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

S.A.No.1293 of 2009

Ellammal

..Appellant/Plaintiff

/versus/

1.Ramani
2.Suguna
3.Sarasu
4.Viji
5.Suriyakala
6.Sulochana
7.Sathiya

..Respondents/Respondents

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree in A.S.No.12 of 2008 dated 05.06.2009 on the file of the Court of Subordinate Judge, Kancheepuram confirming the judgment and decree in I.A.No.1112 of 2005 in O.S.No.97 of 1994 dated 12.04.2007 on the file of the Court of Principal District Munsif, Kancheepuram.

For Appellant : Mr.A.Muthukumar for
Mr.S.Viswanathan

For R1 to R5 & R7 : Mr.A.S.Narasimhan for
Mr.I.Murugan

For R6 : No appearance

J U D G M E N T

(The case has been heard through video conference)

Heard the learned counsel for the appellant the the learned counsel for the respondents 1 to 5 and 7.

2. This Second Appeal is arising from the final decree passed by the Court below in a partition suit.

3. The Trial Court in the partition suit by preliminary

decree has ascertained the shares of the plaintiff and the defendants as $\frac{1}{4}$ and $\frac{3}{4}$ respectively. Thereafter, the parties proceeded for passing of final decree. The Court has appointed an Advocate Commissioner, who has visited the suit premises and has suggested two mode of division. The appellant herein who is entitled for $\frac{3}{4}$ shares, was given the rear side of the suit property with an extend of 15x90 feet, whereas the respondent herein allotted $\frac{1}{4}$ shares with an extend of 15x30 in the front side and left 3 feet lane on the East for common pathway. Since there was a well situated in the rear portion of the suit, the appellant was directed to pay owelty of Rs.2,000/- to the respondent.

4. Aggrieved by the mode of division, the defendants filed the appeal suit, but was dismissed. Hence the present second appeal is filed.

5. The learned counsel for the appellant would contend that being the major share holder, the front portion ought to have been allotted to the appellant and for a dilapidated well, compensation of Rs.2,000/- is excessive.

6. The learned counsel for the respondents would submit that the appellant who was allotted the rear portion of the land also having access from the common lane of 10 feet running East to West on the Southern side. Therefore, both the Courts below have held the mode of division equitable. This requires no interference.

7. On considering the rival submission, this Court finds no error in the mode of division by the Courts below. Hence the same is confirmed. However the compensation of Rs.2,000/- awarded to the respondent herein for the well needs interference in view of the fact that the well has become disused and has no value.

8. Therefore, with the said modification, this Second Appeal is partly allowed. The mode of division decreed by the Courts below is confirmed. No order as to costs.

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Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Subordinate Judge, Kancheepuram.
2. The Principal District Munsif Court, Kancheepuram.
3. The Section Officer, VR Section, High Court, Madras.

+lcc to M/s.P.Srividhya, Advocate, Sr.No.29932

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rr ii (18/11/2020)



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