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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Second Appeal No.1335 of 2009

AND

M.P.No.1 of 2010

Kuppammal

.. Appellant /Defendent

/versus/

1.Muthusamy Gounder

2.Rangasamy Gounder

3.Mani Nadar

4.Krishnasamy

5.Deivathal

6.Eswaran

7.Kangayam

(Respondents 2 to 7 exparte and given up)

.. Respondents/ Plaintiffs

Prayer: Second Appeal has been filed under Section 100 of the Civil Procedure Code against the judgment and decree dated 27.08.2009 made in A.S.No.33 of 2008 on the file of the learned Subordinate Judge, Dharapuram, confirming the judgment and decree dated 17.06.2008 in I.A.No.623 of 2005 in O.S.No.182 of 1995 on the file of the learned Principal District Munsif, Dharapuram.

For Appellant :Mr.Prithivi for
Mr.S.Kaithamalaikumaran

For Respondents:No Appearance for R1
R2 to R7 given up



J U D G M E N T

(The case has been heard through Video Conferencing)

This Second Appeal is filed against the concurrent findings of the Courts below in a suit for partition and separate possession.

2. Heard the learned counsel for the appellant.

3. The second appeal is directed against the final decree passed by the Courts below based on the Commissioner's report demarcating the suit property as per the preliminary decree. The appellant herein is the third defendant in the suit for partition. The suit for partition is hotly contested by the appellant herein denying the right of the plaintiff. After examining the witnesses and appreciating the evidences, the trial Court held that the plaintiff M.Govindan is entitled for 0.85 cents of land in Survey Nos.590/4. The said decree passed in O.S.No.182 of 1995 dated 23.08.1999 was challenged before the First Appellate Court by this appellant in A.S.No.48 of 1989. The same was dismissed on 10.10.2003. Thereafter, the Interlocutory Application for appointment of Advocate Commissioner to measure the suit property and demarcating the share of the plaintiffs by metes and bounds was taken out by the decree holder/plaintiff. Accordingly, a Commissioner was appointed and he submitted his report. The said report was objected by this appellant on the ground that the physical features of the property was not properly noted by the Commissioner and the present Survey Number in the revenue records does not correlate. When the southern portion of the property is 2 to 6 feet below the ground level and northern portion is the vacant with a canal running, there cannot be an equitable partition. Alleging the Commissioner had ignored these aspects and has filed his report, the Commissioner's report was sought to be rejected.

4. The said application was opposed by the decree holder stating that the suit property is fit for division and the coloured portion marked as "ABCD" annexed to the Commissioner's report measuring around of 0.85 cents running North to South conveniently allotted to the plaintiff/decreed holder. The trial Court accepted the same and passed the final decree. Against this the appellant has preferred the First Appeal. The same was dismissed by the Lower Appellate Court.

5. The contentions of the appellant was that no opportunity was given before filing the report and the properties was not fit for division and no reason given as to why the property was divided North to South instead of East to West. These contentions were considered by the Lower Appellate Court and



held it to be flimsy ground for delaying the fruits of the decree.

6. Learned counsel for the appellant would submit that the Courts below ought to have dispassionately considered the objections raised by the appellant regarding the resurvey proceedings of the suit property due to change in the physical features and the report to the Commissioner ought not to have been taken into consideration for passing the final decree.

7. This Court, after giving anxious consideration, is of the view that the objections raised by the appellant is not sustainable. The Commissioner has inspected the suit property in the presence of the counsels representing the parties and has measured the properties with the help of Taluk Surveyor, Firca Surveyor and V.A.O.

8. The Commissioner has stated in his report as below:

"This portion is marked as A,B,C,D in the plan and it is to be allotted to the petitioner by plaintiff. The survey plan is enclosed with this report may be treated as part of the report."

9. To the objection raised by the appellant herein, the Commissioner has also given his reply. The claim of the appellant was considered and the courts below accepted the Commissioner Report for dividing the suit property by metes and bounds. This Court finds no error in the order of the Courts below in passing the final decree. As pointed out by the Lower Appellate Court, the suit is of the year 1995 and the fruits for decree is deprived to the respondent till date at the instance of the appellant, the Court can no further assist the appellant in delaying the judicial process. Hence the second appeal is dismissed. No order as to costs. The connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vri

To:

1.The Subordinate Court, Dharapuram.

2.The Principal District Munsif, Dharapuram.

+1cc to Mr.S.Kaithamalaikumaran, Advocate SR.No. 35853

S.A.No.1335 of 2009

RR(CO)

B.VC(12.08.2021)