

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2020

CORAM:

THE HON'BLE MR.JUSTICE R.SUBRAMANIAN

S.A.No.322 of 2020 and
CMP No.6537 of 2020

1. Nallasamy
2. Ashok
3. Shanmugam

..Appellants/Defendants 9 to 11

Vs.

1. K.R.Dhayalan ..Ist Respondent/Plaintiff
Valliammal (died)
2. K.R.Kannan @ K.R.Sivashanmugham
3. K.R.Viswanathan
4. A.Kannagi
5. K.R.Balakumar
K.R.Sivakumar (a) Snake Rajkumar (Died)
6. A.Krishnaveni
7. K.R.Senthilkumar ..Respondents 2 to 7
/Defendants 2 to 5 & 7, 8

(Notice to RR 2 to 7 are dispersed with
since they were set ex parte)

PRAYER: Second Appeal filed under Section 100 of C.P.C., to set aside the judgment and decree of the Sub Court, Kangayam dated 25.10.2019 in A.S.No.15 of 2018, modifying the judgment and decree of the District Munsif, Kangayam dated 28.03.2018 in I.A.No.1875 of 2012 in O.S.No. 12 of 2009.

For Appellants : Mr.N.Manokaran

J U D G M E N T

The respondents 9, 10 and 11 in the final decree proceedings have come up with this second appeal.

2. The suit in O.S.No.12 of 2009 was filed by the 1st respondent for partition and separate possession of his 1/9th share. A preliminary decree came to be passed declaring his 1/9th share in the suit property. Pending suit, the other defendants namely the defendants 1 to 8 sold their 8/9th share to

appellants herein and the appellants were impleaded as defendants 9, 10 and 11 in the suit. Upon the preliminary decree being passed, the plaintiff filed an application in I.A.No.1875 of 2012 seeking a final decree. A Commissioner was appointed to suggest modes of division of the property. The suit property measures 95 ½ feet East West and 33 feet North South, the Commissioner had suggested two modes of division and had filed two plans which are marked as Exs.C2 and C3.

3. The appellants resisted the application contending that since they have a major share, the 1st respondent / plaintiff should be directed to sell his 1/9th share to them. The said claim was rejected by the trial Court. The trial Court however, allotted a strip of land measuring 3 ½ feet North South and 95½ feet East West to the plaintiff.

4. Claiming that such allotment would be wholly unjust as he cannot use the property for any purpose, the plaintiff preferred an appeal in A.S.No.15 of 2018.

5. The lower appellate Court upon reconsideration of the Commissioner's report and plan, accepted the 2nd plan filed by the Commissioner marked as Ex.C3 and allotted the plots situate on the South Western corner each measuring 10 feet North South and 7 ¼ feet East West. Thus, the plaintiff was allotted a total extent of 29 feet East West, 10 feet North South. He was also given a right in 6 feet in the path way provided by the Commissioner between the two sets of properties. The lower appellate Court also found that the allotment made by the trial Court is wholly unjust as the plaintiff who is 1/9th share holder cannot use the property allotted to him because of its size.

6. Aggrieved by the allotment made by the lower appellate Court, the respondents 9 to 11 have come up with this Second Appeal.

7. I have heard Mr.N.Manoharan, learned counsel for the appellants.

8. Mr.N.Manoharan, learned counsel for the appellants would vehemently contend that the appellants being purchaser of the major share, the Courts below must have directed the plaintiff to sell his 1/9th share to them. Admittedly, the appellants are not family members. They are alinees from the family members. Therefore, they cannot insist that the family member should be directed to sell the property, merely because they are the major share holders. Once it is found that the property is divisible, the Court must allot the property in such manner as it could be usefully enjoyed by the sharers.

9. A look at the plan Ex.C3 on the allotment made by the lower appellate Court allotting plot numbers 1, 2, 3 and 4 each measuring 10 feet North South and 7 ¼ feet East West in all measuring 29 feet East West and 10 feet North South can be most convenient allotment for the plaintiff as well as the appellants herein. The contention of Mr.N.Manoharan that he has been given a larger frontage is not acceptable.

10. I therefore do not see any perversity or error in the allotment made by the lower appellate Court. The lower appellate Court has also taken care to restrict the enjoyment of the common lane by plaintiff only up to the point where his allotted portion ends and not beyond that. Therefore, the allotment made by the lower appellate Court in my considered opinion, is just and proper as it takes care of the interest of both the parties.

11. Therefore, I do not see any question of law much less substantial question of law, to enable me to entertain this second appeal. The appeal therefore fails and it is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vum

To

1. The Subordinate Judge, The Sub Court,
Kangayam
2. The District Munsif,
Kangayam.

+1cc to Mr.N.Manokaran, Advocate, SR.NO. 24389

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VSI II (CO)
KKV/23/09/2020