

A.Nos.593 and 592 of 2018

in

C.S.No.46 of 2014

P.T. ASHA, J.

This application is filed for passing a Final Decree in the suit C.S.No.46 of 2014 by allotting 1/7th share each to the applicants/plaintiffs and to deliver the separate possession to them.

2.The applicants/plaintiffs in C.S.No.46 of 2014 filed the suit for Partition in respect of their 1/7th share each and for separate possession and enjoyment of the same and also for injunction restraining from alienating the properties.

3.The parties trace their right to the properties to one G.Muniammal, the paternal grandmother of the plaintiffs and the defendants. The said G.Muniammal has purchased the properties under the Court Sale dated 01.09.1041 registered as Doc.No.1836/1941 on the file of the SRO, Madras Chingleput. On her death, the property devolved to the defendant G.Parthasarathy Pillai. G.Parthasarathy Pillai died on 26.10.1985 and his

wife P.Angammal. the mother of the parties to the suit died on 13.04.2011. Subsequent to the demise of their parents, the plaintiffs and the defendants inherited the said properties. The plaintiffs would contend that the property was rented out to ten tenants and earning a monthly rental income of Rs.15,000/- till the life time of their mother. The rents have been collected by her and on her demise, the defendants stepped in and started collecting rents without giving any share to the plaintiffs. The plaintiffs being the daughters of Parthasarathy Pillai and Angammal are entitled to their share in the properties in question.

4.Despite making several requests, the defendants refused to partition the properties constraining the defendants to issue Legal Notice dated 02.08.2013 calling for an amicable partition. However, on receipt of the said Notice, the defendants had not come forward to partition the properties. Therefore, the plaintiff left with no other alternative but institute the suit for partition.

5.Though the defendants were served they did not enter appearance and were therefore, set *ex parte* on 13.05.2015 and by the Judgment dated

29.02.2016, the plaintiffs were granted a Preliminary Decree for partition and separate possession of 1/7th share and they were also granted an order of injunction as prayed for. Thereafter, the plaintiffs had come forward with this Final Decree applications.

6. Notice was taken to the respondents/defendants, but however, the applicants were not willing to co-operate and therefore, this Court by order dated 31.10.2019 was pleased to appoint an Advocate Commissioner to divide the suit schedule property and file his report. Pending Final Decree proceedings, the 1st defendant had passed away and his legal heirs were brought on record by order dated 24.07.2019. Pursuant to the warrant issued in his favour, the Advocate Commissioner had visited the suit premises and submitted his report on 21.11.2019. The enclosures would show that the wife of the 3rd defendant and the wife of the 7th defendant were present when the Commissioner had visited the property. The learned Advocate Commissioner has submitted two sketches of the properties in the ground and first floor.

7.The learned Advocate Commissioner has submitted that the suit properties is an old building and in a dilapidated condition consisting of ground and first floor. There are nine portions in the ground floor including restrooms. The Report would describe the construction that is put up in each portion. The learned Advocate Commissioner has also taken note of the staircase which is situate in the portion marked as 8 and 9 and stated that the ground floor is occupied by the defendants 1 and 3 and the first floor by the 2nd defendant. The learned Advocate has suggested the following mode of division in his Report herein below :

“14.I am hereby come to conclusion and give the following suggestions for division of the suit schedule property as follows:

(a)Vacant portion may be allotted to the each applicants/plaintiffs in the suit schedule property, but it was in a dilapidated condition.

(b)may be sold out the entire suit schedule property and allotted 1/7th share amount to each applicants/plaintiffs.

(c)may be completely demolish the building and allotted

*vacant land of the suit schedule property has divided equally
and allotted 1/7th share to each applicants/plaintiffs.”*

8.The applicants/plaintiff have filed their objections to the Commissioner's Report stating that as per the Decree, the Advocate Commissioner ought to have allotted 1171 sq.ft. and if the portions 5 to 9 are allotted including the vacant space between the portions marked in 5, 6 and 7th portions and also the staircase portion, the applicants would get only an extent of 1088 sq.ft.

9.The learned counsel would submit that the applicants/plaintiffs is satisfied if they are allotted the portions marked as 5, 6, the vacant space between 5 and 7 and 7 and 8, the stairway and the portion marked as 9 with the right of the way through 5 feet passage from the road and proceeding the portion marked-5 shown as Sketch-I to the Advocate Commissioner's Report.

10.In my view, this appears to be fair allotment. However, considering the fact that the first floor is continuing in the occupation of the

3rd defendant, the applicant shall permit access to the 3rd defendant to the staircase through the first floor till such time the building is demolished for putting up a new construction. However considering the fact that the learned Advocate Commissioner has opined that the building is in a highly dilapidated condition it would be in the interest and safety of the occupants to vacate the premises earliest. Once the existing building is demolished then the plaintiffs will be entitled to the property marked 5,6,7,8,9 and stairway portion shaded by the Court between the portions 5,6 and 7 and to the 5 feet passage from the entrance of the 14 feet road upto the portion marked 5 which shall be kept as common as a passage for the plaintiff and the defendants. The Sketch – 1 of the Commissioner's Report including the portion now shaded by this Court shall form part and parcel of the Final Decree.

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18.08.2020

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