

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.02.2020

CORAM

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

A.S.No.560 of 2019

K.Renuka ..Appellant/2nd Defendant

Vs.

1.K.Anuratha ..1st Respondent/Plaintiff

2.K.Gopalakrishnan

3.K.Srinivasan ..2&3 Respondents/1st & 3rd Defendants

PRAYER : Appeal filed under Order XLI Rule 1 of A.S. Rules and Sec 96 of CPC against the judgment and decree dated 22.03.2019 made in I.A.No.239 of 2017 in O.S.No.1271 of 2013 on the file of XVI Additional Judge, City Civil Court, Chennai.

For Appellant : Mr.A.M.O. Gurunarayana Rao

For Respondents : Mr.V.Lakshminarayanan for R1
Notice sent - R2 & R3

JUDGMENT

(Delivered by M.M.SUNDRESH, J)

This appeal has been preferred by the appellant, who is the second defendant in the suit filed for partition and separate possession in O.S.No.1271 of 2013. By a preliminary decree, the appellant has been given one-fourth share along with others. There are four children born to one Late.T.Krishnasamy Pillai. The suit for partition has been filed between them.

2. The preliminary decree passed has become final after contest. An application was filed by the plaintiff in I.A.No.240 of 2017 seeking appointment of Advocate Commissioner. The

Advocate Commissioner filed his report along with Engineer's Report and Drawing on 22.11.2017. It appears that no objection has been filed to the Advocate Commissioner's report by the appellant. However, she contended that, on merits, she is entitled to the suit property including the superstructure.

3. The Trial Court dismissed the said contention after having found that it is nothing but a repetition of grounds raised during the preliminary decree proceedings. Accordingly, the final decree was passed on 22.03.2019. Portion 'A' has been given to the 1st respondent/plaintiff on the premise that she is the eldest of all. After the final decree, the same has also been registered. Challenging the same, the present appeal is filed.

4. The learned counsel appearing for the appellant submits that the appellant is the one who put up the construction. She is residing in the 'A' portion. Therefore, the judgment and decree required to be interfered with.

5. The learned counsel appearing for the first respondent submits that a perusal of the report of the Advocate Commissioner would show that the entire building was in dilapidated condition. The learned Advocate Commissioner did a fair job by creating a common passage and divided it among the four parties. As against 'A' portion, there is asbestos sheet, above that is first floor in which the other defendants are living. Now, the appellant is not in good terms not only with the plaintiff but other defendants as well. Therefore, in any case, the appellant cannot be given the 'A' portion. Furthermore, the final decree has been given effect to and, therefore, the appeal will have to be dismissed.

6. All the portions are nothing but rooms. The entire suit property is stated to be about 1345 sq. ft. This has to be divided among the four legal heirs of the deceased. Therefore, the question of 'A' or 'B' portion will not make much difference. We have to take into consideration the submission made by the learned counsel appearing for the 1st respondent/plaintiff that as against 'A' portion, there is asbestos sheet over which others are living. It appears that the appellant is not in good terms with others since she questions the very paternity of the plaintiff herself with the deceased father. According to the appellant/second defendant, the 1st respondent/plaintiff was not born to her father. Furthermore, decree has been registered and the appellant did not raise any objection to the Advocate Commissioner's report. We have to see the reasoning of the trial Judge in the light of the discussion made above. The appellant tried to raise the very same contentions raised before passing of the final decree.

7. In such view of the matter, we do not find any error warranting interference with the judgment and decree of the trial Court and the appeal stands dismissed. Considering the facts of the case, the appellant is given four months time to vacate, as requested by the learned counsel appearing for the appellant. No Costs. Consequently, connected C.M.P.No.17048 of 2019 is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssm

To

The XVI Additional Judge,
City Civil Court, Chennai.

+2ccs to M/s.Hari & Guru Associates, Advocate, S.R.No.17578

+2ccs to M/s.V.Raghavachari, Advocate, S.R.No.17524,17121

Copy To

The Section Officer,
VR Section,
High Court,
Madras.

A.S.No.560 of 2019

KJ (CO)
KKV/03/09/2020

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