

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

A.S.No.190 of 2017
&
C.M.P.No.8069 of 2017

1.Mr.Joe Fernandez ...1st Appellant/1st Petitioner/
1st Plaintiff

2.Smt.W.Janet Lily Asha

3.Mr.Johnie Gerard ...2nd & 3rd Appellants/
3 & 4 Petitioners/3 & 4 Plaintiffs

Vs..

1.V.Ranganathan ...1st Respondent/Respondent/Defendant

2.Ms.Jenifer Georgia ...2nd Respondent/5th
Petitioner/5th Plaintiff

Appeal Suit filed under Section 96 and Order 41-A, Rule 1 of C.P.C., 1908 against the fair and decreetal order dated 08.11.2016 in I.A.No.163 of 2015 in O.S.No.874 of 2008, on the file of III Additional District & Sessions Court, Coimbatore.

For Appellants : Ms.P.Veena Suresh

For Respondents : Mr.P.Valliappan

(for first respondent)

No appearance for second respondent

JUDGEMENT

The Appeal Suit is filed against the judgment and decree dated 28.01.2015 passed in O.S.No.874 of 2008, on the file of III Additional District & Sessions Court, Coimbatore. The Appeal Suit is filed challenging the final decree passed in a partition suit.

Page numbers

2. Admittedly the respective shares of the parties to the lis on hand are crystallized in the preliminary decree passed by the Trial Court in the suit. Subsequently, an application was filed for passing of final decree and the Trial Court taken up the issues for hearing.

3. It is not required to adjudicate all other facts and circumstances in view of the fact that the preliminary decree passed by the Trial Court became final and the rights of the respondent parties had already been crystallized and the same has not been disputed in this Appeal Suit. In view of Section 97 of C.P.C., no such adjudication is permissible and therefore, the ground raised in the Appeal Suit with reference to the final decree alone is to be taken into consideration. The main ground raised in the First Appeal is that the permission granted to the first respondent to purchase the suit schedule property is an error apparent and therefore the final decree is to be set aside. Further, it is contended that the first respondent is making an attempt to purchase the suit property for a very low price and sell the same for higher price to third party. If such an action is permitted, then the same amounts to violation of the spirit of the Will of the mother of the parties. It is contended that the first respondent had made an oral offer of Rs.60,00,000/-, when the market value of the property is more than 2.80 Crores. Thus, the intention of the first respondent is to defraud the other brothers and buy the property at 1/3rd price and latter on sell the property to third parties for higher price.

4. At the outset, it is contended that the first respondent is attempting to purchase the property for a lesser price and intending to sell the same to third parties for higher price for unjust enrichment.

5. This Court is of the considered opinion that the findings of the Trial Court is unambiguous. The Trial Court in clear terms arrived at a conclusion that perusal of Ex.A.1 i.e., Will shows that the testator had clearly stipulated that if any of her three children wants to retain the schedule mentioned property, the other two shall release their share by receiving the value of the property in proportion to the shares allotted to them under the said will. Therefore, the Trial Court after passing of the preliminary decree by upholding the Will dated 22.05.1995 allotted the shares in accordance with the terms of the Will to the respective parties.

6. The Trial Court further made a finding that the defendant had expressed his willingness to purchase the suit property even

Page numbers

in his written statement filed in the original suit. On the contrary, the other children viz., the first plaintiff and the second plaintiff or his legal heirs has not made any such offer. Therefore, in view of the specific direction given by the testator in the Will dated 22.05.1995 that if any one of the children is inclined to purchase the property, the others shall release their share in his favour and that no objection shall be raised by them, Court granted permission to the 1st respondent to purchase the property.

7. The Trial Court found that the respondent/defendant has pre-emptive right to purchase the petition mentioned property. While, permitting the respondent/defendant to avail the benefit of pre-emptive right, the Trial Court directed the market value to be assessed for the purpose of execution of deed of sale. The Trial Court in clear terms held that "fair market value is to be ascertained".

8. Therefore, this Court is of the opinion that there is no perversity or infirmity in respect of final decree passed in the suit for permission and granting permission to the first respondent to purchase the property, as per the terms of the will which was upheld in the preliminary decree. Further, the learned counsel appearing on behalf of the appellants made a submission that the pre-emptive right cannot be extended for an unspecified period and in such an event, there is a possibility of abuse of pre-emptive right by the respondents/defendants. Thus, a time limit is to be fixed for exercise of pre-emptive right and settle the shares to the other legal heirs, failing which, pre-emptive right is to be extended to the other legal heirs and if they are not interested, then, thereafter the petition mentioned property is to be sold through auction. The said submission is certainly to be considered, in view of the fact that the respondent/defendant has been provided with the right of pre-emptive to possess the property by settling the respective shares to the other legal heirs. Therefore, the respondent/defendant is directed to settle the shares to the other legal heirs as per the decree by exercising his pre-emptive right within a period of six months from the date of receipt of a copy of this judgment. In the event of not settling the respective shares to the other legal heirs, then the pre-emptive right granted in favour of the respondent/defendant stands canceled automatically. Thereafter, other parties to the appeal suit are entitled to opt their pre-emptive right, if legal heirs are not interested, then the petition mentioned property shall be sold through open auction and all the legal heirs are entitled to share their respective portion in the preliminary decree. Thus, it is made clear that the respondent/defendant is

Page numbers

bound to exercise his pre-emptive right within a period of six months from the date of judgment and settle the shares to all other legal heirs. With this condition, the pre-emptive right is confirmed in favour of the respondent/defendant.

9. It is made clear that the fair market value referred in the decree of the Trial Court is to be ascertained with reference to the current market value as on today and the value is to be fixed by the bailiff concerned. The bailiff in this regard is at liberty to seek the assistance of an approved valuer for the purpose of fixing the fair market value of the petition mentioned property. Such an exercise of assessing the market value is to be completed by the bailiff within a period of one month from the date of receipt of a copy of this order and thereafter, within a period of six months, the first respondent is directed to settle the shares to the other parties. Accordingly, this Court is of the considered opinion that there is no infirmity as such in respect of the final decree except with reference to extension of pre-emptive right in favour of the respondent/defendant for an unspecified period. Accordingly, the judgment and decree passed in I.A.No.163 of 2015 in O.S.No.874 of 2008 is modified. Consequently, the appeal suit stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

mrm/ssb

To

III Additional District & Sessions Judge,
Coimbatore.

+lcc to Ms.P.Veena Suresh, Advocate SR.2685

+lcc to Mr.P.Valliappan, Advocate SR.2886

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A.S.No.190 of 2017

Page numbers