

A.No.6946 of 2015

in

CS.No.123 of 2011

P.RAJAMANICKAM, J.

This application has been filed by the plaintiff under Order XIV Rule 8 of O.S. Rules r/w Order XXXIV Rule 5 of CPC to pass a final decree in pursuance of the preliminary decree passed in this suit dated 25.04.2014. Since this application has been filed to divide the properties, it has to be construed that this application has been filed under Order XXVI Rule 9 of CPC r/w Order XX Rule 18 of CPC instead of Order XXXIV Rule 5 of CPC which is meant for passing final decree in mortgage suits.

2. The applicant herein has also filed another application in A.No.6945 of 2015 to appoint an Advocate Commissioner to divide the suit properties as per the preliminary decree passed in the suit dated 25.04.2014 and in that application, by the order dated 28.04.2016 an Advocate Commissioner was appointed to divide the suit properties and file a report. Accordingly, the learned Advocate Commissioner has inspected the suit properties with the help of a qualified Surveyor and filed a report stating that in all the three items of the suit properties, buildings are there, but,

since the extent of lands are very small, the said properties cannot be divided.

3. Eventhough notice was served for the first respondent/first defendant in this application, he has not appeared either in person or through counsel. Hence, he was called absent and set ex-parte on 10.03.2021.

4. The applicant/plaintiff and the respondents 2 & 3/ defendants 2 & 3 have filed a Joint Memo stating that

i) Item No.1 of the suit properties is situated in Frincetourin Street, Sowcarpet, Chennai and the extent of the said property is 796 sq.ft. in which a building is there;

ii) Item No.2 of the suit properties is situated in Muthaiyah Muthali Street, Old Washermenpet, Chennai, to an extent of 1200 sq.ft. in which a building is there; and

iii) Item No.3 of the suit properties is situated in Nadaraja Street formally Varathappa Measthri Street, Old Washermenpet, Chennai to an extent of 594 sq.ft. in which also a building is there.

5. Though the learned Advocate Commissioner has not furnished the value of each of the items of the suit properties, the applicant and the respondents 2 and 3 through their Joint Memo have stated that the value of the item No.1 is Rs.28,00,000/- (Rupees Twenty Eight Lakhs Only), the value of the item No.2 is Rs.56,00,000/- (Rupees Fifty Six Lakhs Only) and the value of the item No.3 is Rs.28,00,000/- (Rupees Twenty Eight Lakhs Only).

6. They also stated in the said memo that the Item No.1 may be allotted to the applicant/plaintiff and the item No.2 may be allotted to the respondents 2 and 3 jointly.

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7. As already pointed out that the learned Advocate Commissioner has submitted in his report that the aforesaid properties are indivisible. Considering the said fact and also the joint memo filed by the applicant/plaintiff and the respondents 2 and 3/defendants 2 and 3, this Court is of the view that the item No.1 can be allotted to the applicant/plaintiff and item No.2 can be allotted to the respondents 2 and 3/defendants 2 and 3 jointly and the item No.3 can be allotted to the first respondent/first defendant.

8. In the result, this application is allowed. Final decree is passed by allotting the item No.1 to the applicant/plaintiff and the item No.2 to the respondents 2 and 3/defendants 2 and 3 jointly and the item No.3 to the first respondent/first defendant. No costs. For producing the Non Judicial Stamp Paper, one month time is granted.

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24.03.2021

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