



WEB COPY



A.No.546 of 2018
in C.S.No.47 of 2013

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N.SESHASAYEE.J.

This application has been filed to pass a final decree pursuant to the preliminary decree dated 20.03.2017 passed in C.S.No.47 of 2013.

2.The piece of property has been purchased by the brother and the dispute is about dividing the same into metes and bounds between them. Pursuant to the preliminary decree for half share each, the Advocate Commissioner has been appointed to suggest modes of division to enable the Court to pass the final decree in this application.

3.The plot measures to an extent of 2,386 sq. ft. which fortunately is bound both in the north as well as in the south by two streets. On the north there is Vadivelu 2nd Street whereas on the south the property is abuted by Rajeshwari Street. The Commissioner has divided the property into two equal halves and in the plan he has denoted the Southern part as Part-A and the Northern part as Part-B, and has allotted the Northern half (Part-B) to the plaintiff and the Southern half (Part-A) to the defendant.



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4.The defendant has filed his objections. According to the learned counsel, the only objection the defendant has is that the Commissioner himself has allotted the property to the parties in his report. He added that the manner in which the suggestion for division is made in the Commissioner report exceeds its jurisdiction.

5.After pursuing the papers and considering the rival submissions, this Court considers that what the Commissioner has stated in the report need not be treated as if it were decree. This Court is willing to consider it only as a suggestion by the Commissioner as to the mode of division of the suit property between the two warring brothers.

6.Now, it is time to pass a final decree. The parties preferred a lot system to pick a part, which is a dividers technique. This Court is not impotent to decide how the property should be divided between two that it should resort to lot system. This Court considers that the parties are stretching their differences beyond the permissive limits of law, and want the Court to adopt the techniques which have been given up centuries ago. This Court therefore accepts the Commissioner's report, allotting Part-A on the south



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measuring an extent of 1193 sq. ft. to the defendant and Part-B measuring to
an extent of 1193 sq. ft. on the northern side to the plaintiff.

7.The final decree is passed accordingly. The Commissioner's plan in page
18 of the report shall be appended to the decree.

22.11.2021
(1/2)

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