



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2021

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

AS.No.688 of 2017 and
CMP.No.21968 of 2017

1.V.Jaganathan
2.Santhanalakshmi
3.Bharanikrishnan

... Appellants/Defendant

Vs.

V.Ramamoorthy(deceased)
Priya

...Respondents/Plaintiff

PRAYER: Appeal Suit is filed under Section 96 of CPC against the judgment and decree dated 22.02.2016 made in IA.No.595 of 2014 in OS.No.49 of 2012 on the file of IV Additional District Judge, Coimbatore.

For Appellants : Mr.M.V.Venkateshan

For Respondent : Mr.N.Manokaran

JUDGMENT

The Appeal suit is filed against the judgment and decree dated 22.02.2016 passed in IA.No.595 of 2014 in OS.No.49 of 2012 on the file of IV Additional District Judge, Coimbatore.

2. The suit is filed for partition. The petitioners are the defendants and the respondents are the plaintiffs. The court below allowed the suit and allotted half share to the plaintiffs and half share allotted in favour of the defendants. Admittedly, the defendants did not prefer any appeal suit. On the final decree application filed by the respondents in I.A.No.595 of 2014, advocate commissioner was appointed and accordingly he filed his report along with division of the suit schedule properties.

3. The learned counsel for the appellants raised the contention that the green colour portion which was marked by the advocate commissioner in the plan annexed to the commissioner's



report was developed by the petitioners and they put up house construction and also shopping complex. The court below without allotting the said portion, the other portion was allotted in favour of the petitioner. Therefore, the petitioners prayed to allot the green colour portion instead of blue colour portion.

4. The learned counsel for the respondents clearly pointed that after filing advocate commissioner's report, the petitioners herein pleaded before the court below that they had invested huge amount in a specific portion of suit property and as such they opted for the properties developed by them. Accordingly, they were allotted blue colour portion, in which they put up construction of their house and shopping complex.

5. On perusal of objections raised by the petitioners as well as the final order passed by the court below revealed that the respondents already constructed residential house, shopping complex and in the rear portion of the property coconut grove is situated. The value of the portion sought for by the petitioners are lesser than the respondent's share and petitioners are prepared to establish the same through reliable evidences if necessary. Accordingly, items I, II and V and the western side half portion in Item 6 of the schedule properties, in which the petitioners already constructed residential house and shopping complex were allotted to the petitioners. However, they specifically requested to allot blue colour portion shown in the commissioner's plan with regards to the Item 6 of the suit property in their favour as they are in actual possession of the said property. Therefore, in all the suit properties, green colour portion shown in the surveyor's plan filed along with the commissioner's report are allotted to the respondents herein and blue colour portion shown in the surveyor's plan filed along with the commissioner's report are allotted to the appellants herein. Therefore, this Court finds no infirmity or illegality in the judgment and decree dated 22.02.2016 passed in IA.No.595 of 2014 in OS.No.49 of 2012 on the file of IV Additional District Judge, Coimbatore.

6. Accordingly, this first appeal is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

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To
The IV Additional District Judge,
Coimbatore.

Copy to:
The Section Officer,
V.R.Section,
High Court, Chennai

+1CC to M/s.N.Manokaran, Advocate, Sr.No.34215

AS.No.688 of 2017

PP (CO)
K.RK. (14.09.2021)